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MOTOR CARRIER SAFETY ACT OF 1983

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2174

TO PROVIDE FOR MORE EFFECTIVE MOTOR CARRIER SAFETY REGULATIONS AND ENFORCEMENT, AND FOR OTHER PURPOSES

FEBRUARY 9, 1984

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MOTOR CARRIER SAFETY ACT OF 1983

THURSDAY, FEBRUARY 9, 1984

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Surface Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room SR-253, Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Phillips, professinal staff member; and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator **Danforth**. This morning, the Surface Transportation Subcommittee will hear testimony on S. 2174—the Motor Carrier Safety Act of 1983. This legislation is aimed at improving truck and bus safety in this country.

Last June, the Commerce Committee conducted a hearing on motor carrier safety as part of our hearings on omnibus highway safety legislation—S. 1108. At that hearing, we received testimony which demonstrated the need to eliminate human factors which cause truck accidents as well as to improve the safety of crucial commercial motor vehicle equipment, such as brakes. We also heard of the need for improved enforcement of commercial motor vehicle safety regulations and more uniformity among the States in their safety regulations.

Subsequent to last year's hearing, S. 1108 was favorably reported by the Commerce Committee. The reported version of the motor carrier safety title of this bill reflected many of the changes proposed by the witnesses who testified at our hearing. S. 2174 is identical to the reported version of title III of S. 2174, reflecting the views of groups concerned with this issue. While I remain committed to securing passage of the broader highway safety legislation, I decided to split off the motor carrier safety portion of S. 1108 so that this legislation can move quickly through the Senate and then receive prompt action by our House colleagues. I am also pleased to note that the cosponsors of S. 1108—Senators Packwood, Pell, Hatch, and Randolph—as well as Senators Hollings and Ford, have joined me in this motor carrier safety initiative as cosponsors of S. 2174.

S. 2174 would strengthen the Department of Transportation's safety enforcement authority in a variety of areas and promote uniformity of State safety regulations. The bill would also require DOT and the Interstate Commerce Commission to develop meaningful safety fitness standards for motor carriers to insure that carriers truly are safe, and require DOT to undertake research into safety problems associated with heavy trucks, truck occupant protection, and emergency warning devices carried by commercial motor vehicles.

I look forward to receiving comments from our witnesses today on motor carrier safety and I hope to work with them in securing enactment of this important safety legislation.

[The bill follows:]

II

98TH CONGRESS
1ST SESSION

S. 2174

To provide for more effective motor carrier safety regulations and enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18 (legislative day, NOVEMBER 14), 1983

Mr. DANFORTH (for himself, Mr. PACKWOOD, Mr. PELL, Mr. HATCH, Mr. RANDOLPH, Mr. HOLLINGS, and Mr. FORD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To provide for more effective motor carrier safety regulations and enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this title may be cited as the "Motor Carrier Safety Act of 1983".

PURPOSES

SEC. 2. The purposes of this Act are to promote the safe operation of commercial motor vehicles in or affecting interstate commerce, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

FINDINGS

SEC. 3. The Congress finds that—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby to reduce highway fatalities, injuries, and property damage;

(2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;

(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and

(4) interested State governments can provide valuable assistance to the Federal Government in assuring that commercial motor vehicle operations are conducted safely and healthfully.

DEFINITIONS

SEC. 4. For purposes of this Act, the term—

(1) "commerce" means trade, traffic, or transportation within the jurisdiction of the United States be-

tween a place in a State and a place outside of such State, or which affects trade, traffic, or transportation between a place in a State and a place outside of such State;

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo—

(A) if such vehicle has a gross vehicle weight rating of ten thousand or more pounds;

(B) if such vehicle is designed to transport more than fifteen passengers, including the driver, except for a schoolbus, as defined in section 102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(14)), when used in transporting primary, pre-primary, or secondary school students to or from such schools or events related to such schools; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.);

(3) "employee" means—

(A) a driver of a commercial motor vehicle (including, for purposes of this Act only, an independent contractor while in the course of personally operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; or

(D) any individual other than an employer;

who is employed by a commercial motor carrier and who in the course of this employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States or any State who is acting within the course of such employment;

(4) "employer" means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it in commerce, but such term does not include the United States or any State;

(5) "passenger automobile" means a motor vehicle with motive power, except that the term does not include a multipurpose passenger vehicle, a motorcycle, a bus, a truck, or a trailer designed for carrying ten persons or less;

(6) "person" means one or more individuals, partnerships, associations, corporations, business trusts, or any other organized group of individuals.

(7) "Secretary" means the Secretary of Transportation; and

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas, or a political subdivision thereof.

DUTIES

Sec. 5. Each employer and employee shall comply with the safety and health rules, regulations, standards, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

REGULATORY AUTHORITY AND STANDARDS

Sec. 6. (a) The Secretary shall establish and revise such rules, regulations, standards, and orders as may be necessary in order to further the purposes of this Act. The Secretary shall, where practicable, consider costs and benefits before establishing or revising rules, regulations, standards, or orders under this Act. Such rules, regulations, standards, and orders shall be directed toward assuring that—

(1) commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed upon drivers of commercial motor vehicles do not impair a driver's ability to operate safely;

(3) the physical condition of drivers of commercial motor vehicles is adequate to enable them to drive safely; and

(4) the operation of commercial motor vehicles does not create deleterious effects on the physical condition of such drivers.

(b)(1) The Secretary shall promulgate any such rule or regulation within a period of one year after the date of commencement of any proceeding respecting such rule or regulation. If the Secretary determines that any such promulgation will not be completed within such time period, the Secretary shall immediately notify the Congress and shall furnish the reasons for the delay, information regarding the resources assigned, and the projected completion date, for any such proceeding. If such rule or regulation has not been promulgated within one year after the date of the commencement of any proceeding with respect to such rule or regulation, the Secretary shall supply the Congress with current data regarding the information specified in the preceding sentence, and shall provide the Congress with such information at the end of every sixty-day period thereafter during which the proceeding remains incomplete.

(2) All rules, regulations, standards, and orders issued under this section shall be promulgated in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title), except that the time periods specified in paragraph (1) of this subsection shall apply to such promulgation.

(c) The Secretary may waive in whole or in part application of any rule, regulation, standard, or order established under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. Any waiver permitted under this subsection shall be published in the Federal Register, together with the reasons for such waiver. Any final agency action taken under this section is subject to judicial review, as provided in chapter 7 of title 5, United States Code.

(d) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health and the Secretary of Labor, shall undertake a study of health hazards to which employees engaged in the operation of commercial motor vehicles are exposed, and shall develop such materials and information as are necessary to enable such employees to carry out their employment in a place and manner free from recognized hazards that are causing or are likely to cause death or serious physical harm. The study shall include findings regarding the most appropriate method for regulating and protecting the health of operators of commercial motor vehicles. The findings of such study shall be submitted to the Congress within one year after the date of enactment of this Act.

(e) The Secretary shall coordinate the activities of Federal agencies to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall attempt to minimize paperwork burdens to assure maximum coordination, and to avoid overlap or the imposition of undue burdens on persons subject to such rules, regulations, standards, and orders.

(f) Section 3102 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) The Secretary shall, before prescribing or revising any requirement under this section, consider the costs and benefits of such requirement.".

GENERAL POWERS

SEC. 7. (a) The Secretary may conduct, directly or indirectly, such research, development, demonstrations, and training activities as the Secretary considers appropriate to develop rules, regulations, standards, and orders authorized to be promulgated under section 6 of this Act, to design and develop improved enforcement procedures and technologies, and to familiarize affected persons with such rules, regulations, standards, and orders.

(b) In carrying out the Secretary's functions under this Act, the Secretary is authorized to perform such acts (including conducting investigations and inspections; compiling statistics; making reports; issuing subpenas; requiring production of documents, records, and property; taking depositions; holding hearings; prescribing recordkeeping and reporting requirements; and carrying out and contracting for such research, development, testing, evaluation, and training) as the Secretary determines necessary to carry out the provisions of this Act, or rules, regulations, standards, or orders issued pursuant to section 402 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2302). The Secretary may delegate to a State such functions respecting the enforcement (including investigations) of the provisions of this Act or rules, regulations, standards, or orders issued pursuant to this Act as the Secretary determines appropriate to carry out such provisions.

(c) To carry out the Secretary's inspection and investigation functions under subsection (b) of this section, the Secretary or the Secretary's agent shall, as appropriate, consult with employers and employees and their duly authorized representatives, and shall offer them a right of accompaniment.

DUTY TO INVESTIGATE COMPLAINTS; PROTECTION OF COMPLAINANTS

SEC. 8. (a) The Secretary shall timely investigate any nonfrivolous written complaint alleging that a material violation of any rule, regulation, standard, or order issued under this Act is occurring or has occurred within the preceding sixty days. The complainant shall be timely notified of findings resulting from such investigation. The Secretary shall not be required to conduct separate investigations of duplicative complaints.

(b) Notwithstanding the provisions of section 552 of title 5, United States Code, the Secretary shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical measure within the Secretary's authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

PENALTIES

SEC. 9. (a) Section 507 of title 49, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of section 3102 of this Act or the Motor Carrier Safety Act of 1983, or an order or regulation issued under such section or Act. Such district court shall have jurisdiction to determine any such action and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.".

(b) Section 521(b) of title 49, United States Code, is amended to read as follows:

"(b)(1) If the Secretary finds that a violation of section 3102 of this Act or the Motor Carrier Safety Act of 1983, or a violation of a regulation issued under such section or such Act, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the

Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

"(2) Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of recordkeeping requirements issued by the Secretary pursuant to section 3102 of this Act or the Motor Carrier Safety Act of 1983 shall be liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single recordkeeping violation shall not exceed $2,500. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense: *Provided, however,* That, except for recordkeeping violations, no civil penalty provided under this section shall be assessed against an employee for a violation of this section unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

"(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of section 3102 of this Act or the Motor Carrier Safety Act of 1983.

"(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General, such civil penalty may be compromised by the Secretary.

"(5)(A) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

"(B) In this paragraph, 'imminent hazard' means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

"(6) Any person who knowingly and willfully violates any provision of section 3102 of this Act or the Motor Carrier Safety Act of 1983, or a regulation issued under this title or such Act, shall, upon conviction, be subject for each offense for a fine not to exceed $25,000 or imprisonment for a term not to exceed 1 year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be liable, upon conviction, for a fine not to exceed $2,500.

"(7) The Secretary shall promulgate regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

"(8) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States court of appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

"(9) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund.

"(10) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

"(11) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

"(12) As used in this subsection, the term—

"(A) 'commerce' means trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, or which affects trade, traffic, or transportation between a place in a State and a place outside of such State;

"(B) 'commercial motor vehicle' means any self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo—

"(i) if such vehicle has a gross vehicle weight rating of 10,000 or more pounds;

"(ii) if such vehicle is designed to transport more than 15 passengers, including the driver, except for a schoolbus, as defined in section

102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(14)), when used in transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; or

"(iii) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.);

"(B) 'employee' means—

"(i) a driver of a commercial motor vehicle (including, for purposes of this subsection only, an independent contractor while in the course of personally operating a commercial motor vehicle);

"(ii) a mechanic;

"(iii) a freight handler; or

"(iv) any individual other than an employer;

who is employed by a commercial motor carrier and who in the course of this employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States or any State who is acting within the course of such employment;

"(C) 'employer' means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it in commerce, but such term does not include the United States or any State;

"(D) 'person' means one or more individuals, partnerships, associations, corporations, business trusts, or any other organized group of individuals; and

"(E) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas, or a political subdivision thereof.".

LITIGATION AUTHORITY

SEC. 10. Section 2313 of title 49, United States Code, is amended by striking "The Secretary, or, on" and inserting in lieu thereof "On".

STATE REGULATIONS

SEC. 11. (a) Except as may otherwise be provided in this Act or any other law, all laws, rules, regulations, orders and standards relating to commercial motor vehicle safety shall be nationally uniform, to the extent practicable. A State may adopt or continue in effect any law, rule, regulation, order or standard relating to commercial motor vehicle safety until the Secretary has adopted a rule, regulation, order or standard regarding the subject matter of such State requirement. A State may adopt or continue in effect an additional or more stringent law, rule, regulation, standard or order for commercial motor vehicle safety upon a finding by the Secretary, after notice and opportunity for comment, that there is a compelling local safety need therefor, and that such safety law, rule, regulation, standard or order is not incompatible with any Federal law, rule, regulation, standard or order and will not unduly burden interstate commerce.

(b) Nothing in this Act shall affect existing hour-of-service regulations of any State applying to commercial motor vehicle operations occurring wholly within that State, unless the Secretary affirmatively finds upon review of a State's hours-of-service regulations that such regulations—

(1) materially diminish commercial motor vehicle safety or the health and safety of employees;

(2) are not required by compelling local conditions; or

(3) unduly burden interstate commerce.

If the Secretary makes such an affirmative determination, the Secretary may require such State to adopt Federal hours-of-service regulations.

INSPECTION

SEC. 12. (a) Upon the instruction of a duly authorized State or Federal enforcement official, each commercial motor vehicle shall be required to pass an inspection of all safety equipment required under part 393 of subchapter B of chapter 3 of title 49, Code of Federal Regulations.

(b) The Secretary shall, by rule, establish Federal standards for inspections of commercial motor vehicles no less often than annually, and retention by employers of records of such inspections.

(c) Not later than sixty days after the date of enactment of this Act, the Secretary shall initiate a rulemaking to afford interested parties an opportunity to comment on such part 393 and the inspection or retention procedure established pursuant to subsection (b) of this section. Amendments to the regulations shall be issued and published in the Federal Register not later than one year after such rulemaking is initiated. The amended regulations shall become effective on the date on which they are published in the Federal Register.

CERTIFICATION OF SAFETY FITNESS

SEC. 13. (a) The Secretary, in cooperation with the Interstate Commerce Commission, shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers of property or passengers under sections 10922 and 10923 of title 49, United States Code. Such a procedure shall include—

(1) specific initial and continuing requirements to be met by such persons to prove safety fitness;

(2) a means of determining whether such persons meet the safety fitness requirements specified under paragraph (1); and

(3) specific time deadlines for action by the Department of Transportation and the Interstate Commerce Commission in making safety fitness determinations.

(b) Not later than one year after the date of enactment of this Act, the Secretary shall submit to Congress a copy of the procedure established under subsection (a) of this section.

(c) The rules adopted under this section shall supersede all rules in effect on the date of enactment of this Act regarding safety fitness and safety rating of motor carriers.

HEAVY TRUCK RESEARCH

SEC. 14. (a) The Secretary shall undertake a comprehensive study of safety characteristics of heavy trucks, the unique problems related to heavy trucks, and the manner in which such trucks are driven. Such study shall include an examination of the handling, braking, stability, and crashworthiness of heavy trucks. Not later than September 30, 1985, the Secretary shall submit to the Congress a report on the findings of such study.

(b) There are authorized to be appropriated not to exceed $1,200,000 for the fiscal year ending September 30, 1984, and not to exceed $1,400,000 for the fiscal year ending September 30, 1985, to conduct the research required under subsection (a) of this section.

TRUCK OCCUPANT PROTECTION

SEC. 15. (a) The Secretary shall make a full investigation and study of crash protection for truck occupants. Such study shall examine potential and known hazards to truck occupants and means of improving truck-occupant safety. This study shall also include potential performance standards to be met by truck manufacturers. The Secretary shall submit to Congress a report on the findings of this investigation and study not later than one year after the date of enactment of this Act.

(b) There are authorized to be appropriated for fiscal years 1984 and 1985 such sums as may be necessary to undertake the study required by subsection (a) of this section.

STUDY OF SAFETY-RELATED DEVICES

SEC. 16. (a) The Secretary shall conduct a study of the effectiveness of existing regulations regarding emergency warning devices required to be carried on buses, trucks, truck-tractors, and motor-driven vehicles which are involved in emergency situations. Such study shall also investigate the potential costs and benefits of requiring passenger automobile operators to carry emergency warning devices, and shall examine the relative benefits of various types of warning devices in enhancing highway safety. The Secretary shall submit to the Congress a report containing the findings of this study not later than September 30, 1984.

(b) There are authorized to be appropriated for fiscal year 1984 such sums as may be necessary to undertake the study required by this section.

OVERSIGHT

SEC. 17. The appropriate authorizing Committees of the Congress shall conduct periodic oversight hearings on the effects of this Act no less often than annually for the first three years following the date of enactment of this Act, to insure that this Act is being implemented according to congressional intent and the purposes of this Act.

○

Senator **Danforth**. The first witness is Mr. James Burnley, Deputy Secretary of Transportation.

STATEMENT OF JAMES H. BURNLEY IV, DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY KENNETH L. PIERSON, DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY, FEDERAL HIGHWAY ADMINISTRATION

Mr. **Burnley**. Thank you, Mr. Chairman. Good morning.

I am pleased to appear before this committee to discuss S. 2174, also entitled the Motor Carrier Safety Act of 1983. Ken Pierson, Director of the Bureau of Motor Carrier Safety of the Federal Highway Administration, is with me and will also be available to answer any of the committee's questions.

Secretary Dole asked me to express her regret at not being able to attend this morning's hearing and to assure the committee and the chairman that she believes S. 2174 would provide vital improvements for the Department's motor carrier safety program. The Secretary has also asked me, Mr. Chairman, to submit for the record a letter stating the Department's position on this bill, and I have that for the record.

Additionally, Mr. Chairman, the Secretary instructed me to make it clear she is very pleased to have the opportunity to work with you on this vital safety issue. Her longstanding commitment to improving automobile and truck safety is well known to all, and as a result of your dedication we think lives are being saved and serious injuries reduced every day in this country. She and I are both pleased to make common cause with you on surface transportation safety.

Before turning to the substance of S. 2174, Mr. Chairman, I am pleased to advise the subcommittee that Secretary Dole recently awarded $6.9 million in motor carrier safety assistance grants. These grants, which went to some 40 States, are designed to improve State monitoring and enforcement of commercial motor vehicle rules. We expect grants this year to total $8 million.

Moreover, as a result of the importance of this program, the President's budget seeks a doubling of the size of the program in fiscal year 1985. I should note that this program is a direct outgrowth of the work of this committee as part of last year's nickel gas tax increase, and I think we can all take pride in this cooperative Federal-State effort.

As you know, the Department of Transportation, and Secretary Dole in particular, have placed a high priority on improving safety in all forms of transportation, especially on our highways, where more than 90 percent of all transportation-related fatalities occur. And we have been pleased to work with you and the committee and its staff to to fashion a motor carrier bill that would provide the tools necessary in our judgment to ensure the operational safety of carriers in interstate commerce, without imposing new burdens or paperwork on the industry or impinging on the rightful prerogatives of the States.

S. 2174 is designed to provide increased protection for the traveling public and motor carrier employees by reducing the risk of accidents involving commercial motor vehicles.

If I may, Mr. Chairman, I would like to insert in the record my prepared statement, and there are several passages of that prepared statement that in the interest of time I will not read aloud.

Some 3½ years ago, Congress enacted the Motor Carrier Safety Act of 1980, which reversed nearly a half-century of economic regulation of the trucking industry and stimulated competition for carriers and shippers alike. Congress opened up similar competitive opportunities for the intercity bus industry with the passage of the Bus Regulatory Reform Act of 1982.

But Congress did not in any way intend to deregulate motor carrier safety, and the Department of Transportation shares your view that the Federal Government should continue to improve its efforts to assure the safe operation of trucks and buses in interstate commerce.

The safety sanctions contained in the original 1935 act have changed little over the ensuing 49 years. As you know, the penalty provisions for violation of the Federal motor carrier safety regulations, generally speaking provide for criminal fines of not more than $5,000 for recordkeeping violations, civil penalties of not more than $500 for recordkeeping violations, and criminal fines of $100 to $500 for all other types of violations.

Motor carriers subject to Federal safety regulations are required to submit reports of accidents involving more than $2,000 in property damage or involving any fatality or injury requiring treatment away from the scene of the accident. The Department of Transportation converts these reports to an automated data base and tracks the trends in the safety of the operation of motor carriers of property and passengers. This data base is developed from some 30,000 reported accidents each year, including an average of 750 intercity passenger bus accidents.

These accidents represent, we think, a serious societal cost to the Nation. For example, in 1982 the 31,759 reported truck accidents resulted in 2,479 fatalities, 25,779 injuries, and $321 million in property damage.

I want to emphasize that we have seen no evidence, however, that the recent economic deregulation of the trucking and bus industry has had any effect at all on safety compliance. Indeed, there has been little change in the numbers and types of violations of our motor carrier safety regulations, despite the considerable increase in the number of new carriers over the past 3 years.

Accident rates for carriers subject to Federal jurisdiction have remained rather constant—about 3 per million miles of travel for trucks and 0.6 per million miles for intercity buses. While these rates are low in our judgment, the problem is still a serious one. We believe this performance can and must be improved.

We also believe that improvements along the lines of S. 2174, coupled with the new motor carrier safety assistance program authorized by the STAA in 1982, and our proposal to transfer the Bureau of Motor Carrier Safety into a new National Traffic Safety Administration, will go a long way toward focusing the Department's resources and enlisting State assistance in a concerted national strategy to reduce motor carrier accidents substantially.

Based on the results of our 1979 to 1982 four-State demonstration program, in which stepped-up State motor carrier safety enforcement efforts resulted in an average 30-percent decrease in truck-involved accidents, we are confident significant improvements are possible.

We certainly share your view on the need for review and revision of motor carrier safety regulations, for restating and improving the penalty provisions, for annual State inspections, for heavy truck research, and for special studies on truck occupant protection and emergency warning devices.

As you know, the Department has long sought statutory authority to punish violations of Federal motor carrier safety regulations as civil penalties, including authority for significant fines. At present the Department of Transportation has civil penalty authority only with respect to reporting and filing violations, and even this limited authority does not reach private carriers. While current law does permit us to punish violations with criminal penalties, that authority is unworkable in many instances. As you know, in order to obtain a conviction and impose criminal penalties, a prosecutor must prove to the satisfaction of the court that a violation was knowingly and willfully committed, thereby frustrating the imposition of penalties in many cases. Further, because of heavy criminal case loads in many districts around the United States, cases may be several years old before they come to trial.

We believe the general civil penalty authority of S. 2174 will greatly increase our ability to punish serious violations of our safety regulations and, just as importantly, improve our ability to deter violations of those rules in the first place.

We would, though, like to make one observation concerning this provision. It would appear that the provision as currently drafted could be interpreted as creating civil penalty authority for only two classes of violation: Recordkeeping and a substantial health of safety violation which could reasonably lead to or has resulted in serious personal injury or death. This latter class would then require the Department to identify certain regulations as more substantial than others, and would deny civil penalty authority for violations of the less substantial regulations. In our view, that distinction is probably not necessary and could conceivably hamper our enforcement efforts.

We believe that all the Federal motor carrier safety regulations are designed to promote and protect public safety. To avoid any possible confusion, we would recommend clarifying the provision to provide that civil penalties may be imposed for any violations. The penalties should be based, in part, on the severity and nature of the particular violation.

We also have some concern about the preemptive aspects of section 11 concerning State regulation. As you know, 11(a) allows more stringent commercial motor vehicle safety regulations by States if the Secretary determines that: First, there is a compelling local safety need for the State regulation; second, that the State requirements are not incompatible with Federal safety requirements; and third, that they will not unduly burden interstate commerce.

Because of our concerns about preemption, we believe that the burden of proof in section 11(a) should be reversed. This would permit a State to adopt or continue a more stringent law or regulation unless the Secretary found, after notice and opportunity for comment, that the State rule would unduly burden interstate commerce. Moreover, the current language of section 11(a) would burden us with numerous petitions from a variety of sources for administrative findings as to the acceptability of State requirements, and require expenditure of limited resources in staffing out such determinations. Since we also recognize the need in interstate commerce for consistency in safety standard among the States to avoid unnecessary delays and costs to truck and intercity bus operators, we would be very pleased to work with the chairman and the subcommittee on revised language for this section.

We believe S. 2174 is a very positive bill, and its passage will be most helpful to the Department of Transportation in fulfilling our responsibility for motor carrier safety and improving safety on the public highways. You and your committee are to be commended for your efforts, and we will be pleased to work with you to assure prompt action.

Thank you very much.

Senator DANFORTH. Thank you very much, Mr. Secretary, for being here and for your comments and your supportive and instructive views, particularly on the civil penalties, we will certainly take a look at that and all of your other comments.

Let me just ask you in a related area not really involving this particular bill. When Congress passed the Surface Transportation Assistance Act, one of the provisions in that act was that the Department was to issue regulations by January 7, 1984, establishing minimum performance and installation standards for tractor-trailer spray control devices.

Mr. BURNLEY. Yes, sir.

Senator DANFORTH. I know that those regulations have not been issued. Would you tell us what the time schedule is right now?

Mr. BURNLEY. Yes, sir. Both NHTSA and the Bureau of Motor Carrier Safety and the Office of the Secretary have expended a great deal of time, energy, and effort in trying to put together a rule that will fully comply with the 1982 act. We have run into several practical obstacles and we have continued to push to work through those obstacles.

I think that we have probably been most derelict, however, in one respect, and that is probably not doing as good a job as we might have in keeping this committee up to date about what those practical obstacles are, and they cover several different problems. We would be very pleased, Mr. Chairman, if the time this morning does not permit going through them one by one, to sit down with you and your staff at your earliest convenience and work through the problems with you.

We have by no means given up on the exercise and we are still cautiously optimistic we will figure it out. But I think we really owe you the opportunity to go through it in detail and see just where we are.

Senator DANFORTH. Good. Well, I do not think this is the appropriate time to get into it, because it is not really related to this bill. But I do think that this is something that deserves immediate consideration.

Anybody who has driven on a highway on a wet day knows the problem, and some of us have known people who have been injured. In my case, I know of a family which lost the mother of the family by virtue of an accident involving this kind of situation.

My hope would be that the Department would proceed with all due speed in promulgating the regulations. I understand that the Notice of Proposed Rulemaking for the regulation has not been issued yet?

Mr. **Burnley**. We have, Senator, a great draft NPRM. We have still got a couple of difficulties in terms of fully complying with the spirit and letter of the 1982 act in this area that we simply have not been able to figure out internally. That is another reason why it can be very useful for us to sit down with you and your folks as soon as possible, because you may be able to provide some additional insights as to how we get through those problems.

But we do have a draft NPRM.

Senator **Danforth**. Good. Thank you very much, Mr. Secretary. Thank you for your testimony and for your supportive comments on the bill.

Mr. **Burnley**. Thank you, sir.

[The statement and letter referred to follow:]

STATEMENT OF JAMES H. BURNLEY IV, DEPUTY SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman, Members of the Committee, I am pleased to appear before this Committee to discuss S. 2174 the "Motor Carrier Safety Act of 1983." Ken Pierson, Director of the Bureau of Motor Carrier Safety, Federal Highway Administation, is with me and will also be available to respond to your questions. Secretary Dole asked me to express her regret at not being able to attend this morning's hearing and to assure the Committee that she believes S. 2174 would provide vital improvements for the Department's motor carrier safety program. The Secretary has also asked me to submit for the record a letter stating the Department's position on this bill.

Before turning to the substance of S. 2174, Mr. Chairman, I am pleased to advise the Subcommittee that Secretary Dole recently awarded $6.9 million in Federal safety grants. These grants, which went to 40 States, are designed to improve State monitoring and enforcement of commerical motor vehicle rules. We expect grants this year to total $8 million. Morever, as a recognition of the importance of this program, the President's budget seeks a doubling of the size of this program in fiscal year 1985. I should note that this program is a direct outgrowth of the work of this Committee as part of last year's nickel gas tax increase. We can all take pride in this cooperative Federal-State effort.

DOT, and Secretary Dole in particular, have placed a high priority on improving safety in all forms of transportation—especially in highways, where more than 90% of all transportation-related fatalities occur. Thus, we have been pleased to work with the Committee and its staff to fashion a motor carrier bill that would provide the tools necessary to ensure the operational safety of carriers in interstate commerce, without imposing new burdens or paperwork on the industries or impinging on the rightful prerogatives of the States. S. 2174 is designed to provide increased protection for the traveling public and motor carrier employees by reducing the risks of accidents involving commerical motor vehicles.

BACKGROUND

The Federal government has regulated the operations of motor carriers in interstate commerce since 1935, and safety has been a prime consideration since the issuance of the first interest motor carrier certificate of convenience and necessity in 1936. In 1939, the Interstate Commerce Commission issued the first set of motor carrier safety regulations applicable to for-hire carriers, and in 1940, extended those rules to private motor carriers.

Three and one-half years ago, Congress enacted the Motor Carrier Act of 1980, which reversed nearly a half-century of economic regulation of the trucking industry and stimulated competition for carriers and shippers alike. Congress opened up similar competitive opportunities for the intercity bus industry with the passage of the Bus Regulatory Reform Act of 1982. But Congress did not intend in any way to deregulate motor carrier safety; and DOT shares your view that the Federal government should continue to improve its efforts to assure the safe operation of trucks and buses in interstate commerce. The safety sanctions contained in the original 1935 Act have changed little over the ensuing 49 years. The penalty provisions for violations of the Federal Motor Carrier Safety Regulations, generally speaking, provide for criminal fines of not more than $5,000 for recordkeeping violations; civil penalties of not more than $500 for recordkeeping violations by common and contract carriers only; and criminal fines of $100 to $500 for all other types of violations.

When the ICC first issued motor carriers safety rules in 1936, they applied to about 100,000 business entities, almost all sole proprietorships or family-held businesses. Today, those safety rules, which are now enforced by DOT's Bureau of Motor Carrier Safety, apply to more than 200,000 business entities, including transcontinental carriers and large private carriers fleets, as well as smaller truck and bus companies.

THE SAFETY RECORD

Motor carrier subject to Federal safety regulations are required to submit reports of accidents involving more than $2,000 in property damage, or involving any fatality or injury requiring treatment away from the scene. DOT converts these reports to an automated data base and tracks the trends in the safety of operation of motor carriers of property and passengers. This data base is developed from some 30,000 reported accidents each year, including an average of 750 intercity passenger bus accidents. These accidents represent a serious societal cost to the Nation. For example, in 1982, the 31,759 reported truck accidents resulted in 2,479 fatalities, 25,779 injuries, and $321 million in property damage.

I want to emphasize that we have seen no evidence that the recent economic deregulation of the trucking and bus industries has had any effect at all on safety compliance. Indeed, there has been little change in the number and types of violations of our motor carrier safety regulations, despite the considerable increase in numbers of new carriers over the past three years.

Accident rates for carriers subject to Federal jurisidiction have remained rather constant—about 3.0 per million miles of travel for trucks and 0.6 per million miles for intercity buses. While those rates are low, the problem is still a serious one, given the number of commercial vehicles on the highways and the annual mileage traveled by these vehicles each year. We believe this performance can and must be improved.

THE SOLUTIONS

We believe that improvements along the lines of S. 2174, coupled with the new Motor Carrier Safety Assistance Program authorized by the Surface Transportation Assistance Act of 1982, and our proposal to transfer the Bureau of Motor Carrier Safety into a new National Traffic Safety Administration, will go a long way toward focusing the Department's resources and enlisting State assistance in a concerted national strategy to reduce motor carrier accidents substantially. From the results of our 1979-1982 four-State demonstration program, in which stepped-up State motor carrier safety enforcement efforts resulted in an average 30 percent decrease in truck-involved accidents, we are confident significant improvements are possible.

VIEWS ON THE BILL

We certainly share your view on the need for review and revision of motor carrier safety regulations; for restating and improving the penalty provisions; for annual State inspections; for heavy truck research; and for special studies on truck occupant protection and emergency warning devices.

The Department has long sought statutory authority to punish violations of Federal motor carrier safety regulations as civil penalties, including authority for significant fines. At present, DOT has civil penalty authority only with respect to reporting and filing violations, and even this limited authority does not reach private carriers. While current law does permit us to punish violations with criminal penalties, that authority is unworkable in many instances. As you know, in order to obtain a conviction and impose criminal penalties, a prosecutor must prove, to the satisfaction of a court, that a violation was knowingly and willfully committed, thereby frustrating the imposition of penalties in many cases. Further, because of heavy criminal case loads in many districts around the Nation, cases may be several years old before they come to trial. We believe the general civil penalty authority of S. 2174 will greatly increase our ability to punish serious violations of our safety regulations and, just as importantly, improve our ability to deter violations of those rules in the first place.

However, we would like to make one observation concerning this provision. It would appear that the provision as currently drafted could be interpreted as creating civil penalty authority for only two classes of violations: (1) recordkeeping, and (2) a substantial health or safety violation which could reasonably lead to or has resulted in serious personal injury or death. This latter class would then require the Department to identify certain regulations as more "substantial" than others, and would deny civil penalty authority for violations of the "less substantial" regulations. In our view, that distinction is unnecessary, and could hamper our enforcement efforts. We believe that all the Federal Motor Carrier Safety Regulations are designed to promote and protect public safety. To avoid any possible confusion, we recommend clarifying the provision to provide that civil penalties may be imposed for any violations. The penalties should be based, in part, on the severity and nature of the particular violation.

We also have some concern about the preemptive aspects of section 11 concerning State regulation. Section 11(a) allows more stringent commercial motor vehicle safety requirements by States if the Secretary determines that there is a compelling local safety need for the State regulation, that the State requirements are not incompatible with Federal safety requirements, and that they will not unduly burden interstate commerce. Because of concerns about preemption, we believe that the burden of proof in section 11(a) should be reversed. This would permit a State to adopt or continue a more stringent law or regulation unless the Secretary found, after notice and opportunity for comment, that the State rule would unduly burden interstate commerce. Moreover, the current language of section 11(a) would burden us with numerous petitions from a variety of sources for administrative findings as to the "acceptability" of State requirements, and require expenditure of limited resources in staffing out such determinations. Since we also recognize the need in interstate commerce for consistency in safety standards among the States to avoid unnecessary delays and costs to truck and intercity bus operators, we would be pleased to work with the Committee on revised language for this section.

CONCLUSION

On balance, we believe S. 2174 is a very positive bill, and its passage will be most helpful to DOT in fulfilling our responsibility for motor carrier safety and improving safety on the public highways. Your Committee is to be commended for its efforts; we will be pleased to work with you to assure prompt action.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., February 9, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR JACK: Thank you for your recent invitation to appear before your subcommittee and testify on S. 2174, the "Motor Carrier Safety Act of 1983". Because of a scheduling conflict, I will not be able to appear before your subcommittee and so I have asked Deputy Secretary Jim Burnley to appear in my place. I would like your permission to have this letter of support for your efforts printed in the record of the hearing.

I appreciate your continued leadership in the highway safety program, and I firmly believe that the motor carrier safety program administered by the Department of Transportation needs additional tools to ensure that trucks and buses traveling in interstate commerce are operated safely. S. 2174 would provide the necessary changes required for this program.

You asked me for suggestions which would improve S. 2174's provisions regarding motor carrier safety. I am concerned with a provision in the bill that could be interpreted as creating civil penalty authority only for recordkeeping violations and violations that can be linked to serious personal injuries or death. I recommend that the provision be clarified to permit civil penalties for all violations. Of course, the civil penalty should vary with the seriousness of the violation.

I also urge that the Department's efforts focus on interstate commerce and that the bill not authorize me to preempt state laws unless the state laws will unduly burden interstate commerce. However, we recognize the need for—and the benefits of—consistency in safety standards among the states and I would be pleased to work with you to develop language to balance these concerns.

Thank you for the opportunity to comment on S. 2174. I hope that this information is helpful.

With best wishes.

Sincerely,

ELIZABETH HANFORD DOLE.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. Questions have been raised about the impact of S. 2174 on hazardous materials transportation safety regulation, and specifically the relationship between Section 11, "State Regulations," and the Hazardous Materials Transportation Act (HMTA). It is the Committee's understanding and intent that S. 2174 would not alter the present relationship between motor carrier safety law and that Act or any future amendments thereto—that is, that the HMTA is controlling with respect to the regulation of hazardous materials and specifically the relationship between Federal and State and local hazardous materials laws. Committee members would appreciate your comments on the current relationship between motor carrier and hazardous materials regulation, and the Committee's understanding about the impact of S. 2174 on that relationship.

Answer. We share the Committee's views that Section 11 of S. 2174 would not alter the present relationship between Federal and State and local hazardous materials laws. In the main, the HMTA relates to the designation of materials that present an unreasonable risk to health or safety, to containment systems for product retention, to marking of packages, placarding of vehicles and the handling and routing of hazardous materials. The motor carrier safety laws govern the qualifications and hours of service of drivers, the safety of operation of the vehicles, and the maintenance and inspection of the equipment to assure high standards of safety. Regulations issued pursuant to HMTA specifically require compliance with the Federal Motor Carrier Safety Regulations (FMCSR) when hazardous materials are transported by highway. The FMCSR, moreover, prescribe certain operational standards when transporting hazardous materials by highway. As more State and local agencies are charged with responsibility for the enforcement of both sets of regulations, the potential for varying interpretation and relative weight or preference of one regulatory enforcement strategy vis-a-vis another may develop. We do not see this as necessarily creating a problem. On the contrary, it is more likely that enforcement efforts will become more cooperative and standardized.

Question 2. You have testified to a concern over Section 11 of S. 2174, "State Regulations," and have suggested some alternative language. The language currently in the bill mirrors that included in the Federal Railroad Safety Act. How would you explain a standard for determining the validity of State motor carrier regulation which differs from that applicable to rail regulation?

Answer. Use of the public highway is historically and traditionally closely regulated by Federal, State, and local authorities, depending on political interest, jurisdictional authority and enforcement responsibility. It is, to a large extent, the mix of highway users and their often countervailing interests that require constant and on-the-scene efforts to assure compliance with regulatory safeguards. The variety of vehicles creates enormous safety problems which differ significantly depending on time and place. The regulatory problems associated with commercial motor vehicles are infinitely more complicated than a railroad right-of-way where the issue is generally limited to keeping trains on the tracks and keeping other things and people off. The occasion for State and local law enforcement and the likelihood of situations peculiar to an area are so much greater with respect to highway traffic that a comparison with rail transportation is inappropriate, if not impossible. The myriad situations that are local in nature can justify exceptions to general rules. Therefore, we believe that States and localities should be allowed some flexibility to meet local needs. We believe our proposed alternative language provides that flexibility while also assuring that Federal preemption can be imposed where necessary.

Question 3. Your testimony refers to the motor carrier safety assistance program authorized in the gas tax legislation last Congress. How would you envision Section 11, or some similar provision in S. 2174 relating to State regulation, to impact that assistance program and specifically the criteria by which the funds are distributed?

Answer. The Motor Carrier Safety Assistance Program is designed to foster uniformity of safety standards by conditioning grants on a State's adoption of the Federal Motor Carrier Safety Regulations or compatible State regulations. Some flexibility is allowed for local and intrastate rules that do not conflict with rules applicable to interstate commerce. We believe Section 11 should be drafted so as to allow for this flexibility, and that utilizing only the "barrier to commerce" criterion is adequate.

Question 4. Industry representatives have testified that the requirement for an annual inspection in Section 12 of S. 2174 would not be of great benefit and that a system of roadside inspections is more desirable. It is the Committee's intent that this annual inspection requirement be a minimum requirement, which would not preclude additional, periodic roadside inspections nor other inspections programs, such as the Commercial Motor Vehicle Safety Alliance or carrier initiatives. Committee members would appreciate your comments on how the Department would envision implementing this section in light of those concerns raised.

Answer. We would be inclined to continue in effect the present requirement in 49 CFR Part 396 for systematic inspection and maintenance by carriers. The requirement in S. 2174 becomes then not a minimum requirement, but an additional requirement with consequent additional costs. We would propose to minimize these costs by permitting the authorization of private entities to perform the basic inspection tasks and to issue some form of State approved certification. Annual inspections could be performed by large fleets (those large enough to employ qualified mechanics to perform maintenance on their vehicles), by leasing companies which furnish the majority of commercial vehicles to private motor carriers, and by vendors that employ qualified mechanics, such as original equipment manufacturers sales outlets. It is also possible to enlist the services of major truck stop chains to perform such inspections for owner operators. All such inspections would have to conform to national standards, and this would have to be verified by continued unannounced roadside inspections. Our understanding is that few States have qualified personnel or facilities to conduct commercial vehicle inspections. The question of intercity bus inspection may be an exception, in that several States require safety inspection by State inspectors as a condition for operating in or through their jurisdiction. We believe most States would need some kind of evidence of annual inspection in order to grant reciprocity. Such a sticker or decal would not be evidence of compliance with all Federal safety rules, however, but only with the limited requirement of annual inspection. Failure to display evidence of inspection would constitute a violation, but display of the evidence would not provide any immunity to roadside inspection.

Question 5. The National Association of Regulatory Utility Commissioners (NARUC) has recommended the formation of a National Motor Carrier Safety Advisory Committee to advise and recommend on matters pertaining to motor carrier safety. What is the Department's view of this proposal?

Answer. The Department currently has a National Motor Carrier Advisory Committee, the National Highway Safety Advisory Committee, and is in the process of establishing a National Hazardous Materials Advisory Committee. Rather than creating another advisory committee, we would prefer to give consideration to some appointments of State regulatory officials to existing committees as vacancies come up. These committees do have State officials as members, but very few from the public service commissions. Indeed the trend is toward motor carrier safety authority going to State Police or State Department of Transportation agencies, rather than the State economic regulatory agencies.

Question 6. It has also been suggested by NARUC that the regulatory coverage of S. 2174 not include intrastate transportation affecting interstate commerce, arguing that the States have a valid interest in regulating those movements. What is your view of this suggestion?

Answer. We agree that States have a responsibility to regulate the safety of operations of intrastate carriers, and are quite comfortable with limiting our role to influencing States to move toward uniformity by the conduct of studies, by establishing national interstate rules, by the design of the Motor Carrier Safety Assistance Program, and through cooperative enforcement agreements. We also believe the Commercial Vehicle Safety Alliance, a confederation of State enforcement agencies, is bringing about a significant degree of uniformity among the States, by conditioning membership in the Alliance on the acceptance of certain minimum requirements and standard out-of-service criteria. Consequently, expanding Federal authority to transportation "affecting interstate commerce" would not necessarily preclude a role for State regulation of purely intrastate activity.

Question 7. Section 30 of the Motor Carrier Act of 1980 granted the Department of Transportation the authority to exempt certain intrastate nonbulk hazardous materials from the application of minimum financial responsiblity requirements mandated under the Act. Certain parties have proposed a legislative amendment which would expand this authority to cover certain interstate nonbulk hazardous materials, arguing that many such movements, while interstate, are local in nature and should not be unduly burdened, as was intended by these provisions of the Act. Committee members would appreciate your comments on this proposal.

Answer. We support the rationale behind this amendment: that, from the standpoint of safety, there is no difference between interstate and intrastate tranportation. We believe, however, that the amendment goes too far in that it gives greater significance to the distinction between bulk and nonbulk quantities than is justified by experience.

The Department's experience in regulating motor carrier transportation of hazardous commodities indicates that the transportation of less than bulk quantities of some hazardous commodities can pose risks to the public that require special treatment. When these quantities are being carried, our regulations require that the vehicle itself bear a placard warning of the hazard and informing emergency response personnel of the best ways to handle releases of the commodities. (49 CFR 172.504) Carriage of lesser quantities does not pose special risks. Given that public protection is the principal goal of Section 30, we prefer to analyze insurance needs from that perspective. Therefore, our suggestion is that Section 30 be amended to exempt entirely interstate transportation of hazardous commodities in quantities less than those requiring vehicle placarding. Such action would exempt many vehicles from Federal financial responsibility requirements when carrying fewer than 1,000 pounds (aggregate gross weight) of many commodities, and therefore remove a burden from plumbers, dry cleaners, hardware store operators, farmers, and others who must cross State lines with quantities of hazardous commodities that do not compromise highway safety.

The perception that led to the suggested amendment is that Section 30 deals categorically with an industry that is too specialized to be dealt with in this way. We strongly agree. There are many industry factors that affect safety and public protection; among these are size and type of vehicle, proportion of operations conducted on highways (as opposed to off-road), whether the driver has duties other than driving, truckload versus less than truckload, and type and quantity of cargo, plus many others. Our other safety regulations take all of these into account as appropriate. Only our insurance regulations do not and that is because Section 30 prohibits us from doing so. It divides all trucking into three types and all vehicles into two sizes and provides (with minor exceptions) two levels of insurance (one for before and one for after Janauary 1, 1985) for each type in the larger size and none in the smaller size. In a time of great change in this industry, much more flexibility is needed. The Motor Carrier Act's promises to the public of improved service and choice, and to small businesses of improved opportunity, in trucking are denied by the mainenance of financial barriers which bear so little relation to the goal of public protection.

We urge again, as we in our 1982 report to Congress on Section 30, that we be given authority to treat insurance in the same manner as other factors affecting safety and public protection: specifically, not categorically as required by Section 30. We urge that Section 30 be amended to remove the categorical levels of financial responsibility, leaving the determination of what level best serves the public to the public rulemaking process.

We believe that the same principles apply to bus financial responsibility under Section 18 of the Bus Regulatory Reform Act of 1983. The categorical levels of financial responsibility there also are restraining growth in an important industry undergoing major change. In the rulemakings that we have conducted under both statutes, we were unable to conclude on the basis of the statutory criteria that the higher levels of financial responsibility set in the two statutes should be imposed. We believe that the public interest in safe, competitive transportation requires removal in both statutes of the requirements for any specific levels of financial responsibility.

Senator DANFORTH. The Honorable Reese Taylor, Chairman of the ICC. Good morning, Mr. Chairman.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JAN ROSENAK, LEGISLATIVE COUNSEL; AND WARREN McFARLAND, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. TAYLOR. Good morning to you, Mr. Chairman.

Let me begin by introducing those at the table with me this morning. On my right is the Commission's Legislative Counsel, Jan Rosenak; and on my left is Warren McFarland, who is the Director of our Office of Compliance and Consumer Assistance.

I appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission and my own views regarding the important subject of motor carrier safety. Although we no longer have direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of the ICC, and we make every effort to insure that carriers which receive Commission authority will operate in a safe manner.

In my opinion, there are three important elements which combine to determine the safety of motor carrier operations on our public highways. You might call them three legs of the stool: Safe roads, safe drivers, and safe equipment. Since the Commission has no expertise in the area of highway repair and construction, we will not comment on that element.

In the equipment safety area, it is my personal view that requiring commercial motor vehicles to pass an annual safety inspection, as provided for in section 12 of S. 2174, might go a long way toward insuring that all commercial motor vehicles traveling on our public highways are capable of operating safely.

Another important aspect of motor carrier operations which has an impact on safety is the requirement that carriers maintain insurance levels which are adequate to protect the public. As you know, the Motor Carrier Safety Act and the Bus Regulatory Reform Act require the Department of Transportation to set minimum levels of financial responsibility for motor carriers, and the Commission must insure that carriers have on file evidence of insurance that complies with the prescribed levels.

Liability insurance primarily assures financial compensation for serious personal injuries or property damage resulting from negligent vehicular operations. It can be purchased at a price notwithstanding a carrier's safety record. Therefore, it is my belief that insurance requirements alone are not enough to insure safe commercial motor vehicle operations.

I would like to turn now to section 13 of S. 2174, which is really the provision that affects Commission activities most directly. Section 13 would require the Department of Transportation, in cooperation with the Commission, to establish specific safety fitness standards applicable to motor carriers applying for new or additional operating authority.

As part of this task, S. 2174 would require the Commission to assist DOT in developing adequate procedures for determining whether applicants meet these safety fitness requirements. The Commission believes that this provision is a useful approach to the safety problem and that specific safety fitness requirements might aid our efforts to insure that those carriers which gain entry into the motor carrier industry are in fact safe.

The fitness of motor carrier applicants is an issue which the Commission takes quite seriously and one which is very important to me personally. For example, during congressional consideration of the Bus Regulatory Reform Act, the Commission advocated a provision to strengthen our ability to prevent unsafe motor carriers of passengers from operating. Section 22 of that legislation was adopted as a result of our efforts.

Next, let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are in fact fit with respect to safety. Since the Bureau of Motor Carrier Safety within DOT has primary responsibility in the safety area, cooperation between our agencies is essential. In the fall of 1982, former Secretary Lewis and I signed a memorandum of understanding and agreement which formalized arrangements for the sharing of information and participation by DOT in safety related fitness proceedings before the Commission. Under this agreement, the Commission requests the safety ratings of applicants from the Bureau of Motor Carrier Safety [BMCS] before making a determination of fitness.

If an applicant for temporary authority has an unsatisfactory safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we determine outweighs the safety consideration. If the safety rating is conditional or reflects insufficient information, the Commission may grant the operating authority and may condition the grant upon compliance with applicable safety regulations.

Applicants for permanent authority are handled somewhat differently. If BMCS is not satisfied as to the safety fitness of a carrier applying for permanent authority, it can petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance can also petition to intervene on the issue of safety fitness, and BMCS may present safety evidence to the Commission. If questions are not raised regarding an applicant's safety fitness, the Commission will determine the carrier's fitness based on the entire record, including the safety rating obtained from BMCS.

We believe that our procedures for determining the safety fitness of applicants for operating authority, together with the insurance requirements, are a significant measure of the applicant's willingness and ability to operate safely. However, we also believe that our procedures could be improved and that section 13 of S. 2174 might offer a useful approach to dealing with this issue. I personally think it would be extremely helpful.

The Commission would welcome the opportunity to continue our efforts with the Department of Transportation to improve the safety of our regulated carriers. We do not believe, however, that the establishment of fitness should be so restrictive and burdensome as to constitute an economic entry barrier.

In your invitation to testify today, you requested that I provide any positive ideas I might have which would improve motor carrier safety. It is my opinion that one possibility might be to require applicants to submit a safety program with their applications and require that the safety program contain certain elements, such as periodic vehicle maintenance checks and safety training programs for employees. In the past, the Commission has imposed such requirements in certain cases where conditional grants of authority were deemed appropriate. If safety program filings were mandatory, it is possible that onsite inspections would be necessary in order to insure that a carrier followed the safety program outlined in its application. I believe that this type of approach could provide a good starting point in the effort to develop safety fitness standards.

It should be recognized, however, that there are certain practical problems with safety fitness determinations in licensing proceedings. First-time applicants usually have no operating record from which one can make an assessment of their safety. Further, many carriers do not own their own equipment. Instead, they do business by entering into leasing arrangements for equipment and drivers. Therefore, the equipment and drivers a carrier is planning to use at the time of filing its application may not be the same as those actually used after operations have begun.

One further point should be mentioned regarding the specific language of section 13. Under current law, when the Commission is deciding a motor carrier application, factors of public need and the national transportation policy are balanced with the fitness criteria. If it is the intent of Congress that a carrier's safety fitness be an overriding consideration in deciding applications for authority, it is my belief that the legislation should state that intention very clearly and specifically.

Now, in closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on the Nation's highways. I believe that an increased emphasis on safety matters is absolutely crucial in tandem with the reduction of economic regulation, and we are pleased to see that the Department of Transportation shares our concern in this area and has taken such a positive stand, particularly this morning in Mr. Burnley's testimony.

As we move toward a more competitive environment for the trucking industry, we must remain committed to doing all that we can to insure that carriers operating under Commission authority continue to provide transportation that is not only economical, but also safe.

Thank you again for this opportunity to present the Commission's views and my views in this matter. Now I would be glad to answer any questions that you might have, Mr. Chairman.

Senator **DANFORTH**. Thank you very much, Chairman Taylor, for your very excellent testimony.

Do you have proposals for tightening up the language in the bill relating to safety fitness, to make it clear that it is the overriding consideration?

Mr. **TAYLOR**. I do not have any specific language, but we would be very pleased to prepare some and submit it to you for the record.

Senator **DANFORTH**. That would be your recommendation, that we make it clear that this is the overriding consideration?

Mr. **Taylor**. I cannot speak for my colleagues on that particular point, but I certainly would favor such an amendment and favor such language, and we would be glad to submit it.

Senator **Danforth**. Good. Well, thank you very much.

Let me ask you about the insurance point that you raised. What has happened in liability insurance for trucks, and also for buses, under deregulation?

Mr. **Taylor**. I am not quite sure I understand what you mean, what has happened. Are you talking about levels of required insurance?

Senator **Danforth**. Right. Has there not been a reduction, or am I wrong on that?

Mr. **Taylor**. No; I think it has gone up. The levels that I have of record now, effective November 19, 1983, for passenger carriers are: Any vehicle with a seating capacity of 16 passengers or more—$2.5 million; and any vehicle with a seating capacity of 15 passengers or less—$750,000. As of November 19, 1985, those two figures will increase to $5 million and $1.5 million, respectively.

It is a little more detailed in the trucking or property carrier area. I could submit that information for the record, if you would like the actual levels.

Senator **Danforth**. Are they about right, do you think?

Mr. **Taylor**. Of course, that is really DOT's determination, as to what those levels ought to be. I can defer to Mr. McFarland on that, whose office is involved with insurance matters and our insurance compliance activities. Maybe you would like to express an opinion.

Mr. **McFarland**. We have not had any real problems with those levels. I think they are probably appropriate levels.

Senator **Danforth**. Thank you very much, Mr. Chairman.

Mr. **Taylor**. Delighted to have been here, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission regarding the important subject of motor carrier safety. Although we no longer have direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of this agency, and we make every effort to ensure that carriers which receive Commission authority will operate in a safe manner. In my testimony today, I will discuss motor carrier safety issues generally, the Commission's current procedures for determining the safety fitness of applicants, and the development of a more specific safety fitness standard.

There are three important elements which combine to determine the safety of motor carrier operations on our public highways—safe roads, safe drivers, and safe equipment. Since the Commission has no expertise in the area of highway repair and construction, we will not comment on that element except to say that safety should benefit from an improvement of conditions on our nation's highways as a result of the increased funding provided by the Surface Transportation Assistance Act of 1982.

An important aspect of motor carrier operations which has an impact on safety is the requirement that carriers maintain insurance levels which are adequate to protect the public. As you know, the Motor Carrier Act (Section 30) and the Bus Regulatory Reform Act (section 18) require the Department of Transportation (DOT) to set minimum levels of financial responsibility for motor carriers of property and passengers. Prior to issuing operating authority, the Commission must assure that carriers have filed evidence of insurance that complies with the minimum levels prescribed by DOT.

Liability insurance primarily assures financial compensation for serious personal injuries or property damage resulting from negligent vehicular operations. It can be purchased at a price notwithstanding a carrier's safety record. In addition, most motor carriers of any size have deductible provisions in their insurance policies which exclude coverage for claims less than the deductible. It is common for these deductibles to be $50,000 or greater. The insurance process provides protection for the public from the first dollar of liability, though it does not provide compensation for those accidents which are within the deductibles.

I would like to turn now to section 13 of S. 2174, which is the provision that affects Commission activities most directly. Section 13 would require the Department of Transportation, in cooperation with the Commission, to establish specific safety fitness standards applicable to motor carriers applying for new or additional operating authority. As part of this task, S. 2174 would require the Commission to assist DOT in developing adequate procedures for determining whether applicants meet these safety fitness requirements. This provision reflects an important goal which the Commission and DOT share—keeping unsafe and uninsured vehicles off our nation's highways. The Commission believes that the approach to accomplishing this objective, as set forth in section 13, is a useful one, and that specific safety fitness requirements might aid our efforts to ensure that those carriers which gain entry into the motor carrier industry are safe. However, the Commission is concerned that the establishment of fitness not be so burdensome as to erect unnecessary economic impediments to qualified entrants.

The fitness of motor carrier applicants is an issue which the Commission takes seriously and one which is very important to me personally. For example, during Congressional consideration of the Bus Regulatory Reform Act, the Commission advocated a provision to strengthen our ability to prevent unsafe motor carriers of passengers from operating. As a result of our efforts, section 22 of that legislation was adopted to improve enforcement efforts in this area. This provision enables the Commission, upon request of the Department of Transportation, to suspend a carrier's authority where the carrier has engaged in a continuing pattern of unsafe activities that constitute an imminent hazard to life or property. In addition, section 23 increases the amount of the civil penalty for illegal operations.

Next let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are fit with respect to safety. As entry into the trucking industry has been liberalized under the provisions of the Motor Carrier Act of 1980, the willingness and ability to conduct safe operations has remained an important element of the fitness test that all applicants for motor carrier authority must satisfy in order to receive a certificate. Since the Bureau of Motor Carrier Safety (BMCS) within DOT has primary responsibility in the safety area, cooperation between our agencies is essential when the Commission is examining an applicant's fitness for operating authority. In the fall of 1982, former Secretary Lewis and I signed a new Memorandum of Understanding and Agreement which formalized arrangements for:

(1) Sharing of information; (2) availability of direct computer access by Commission staff to DOT safety data; and (3) DOT participation in safety-related fitness and revocation proceedings before the Commission.

This Memorandum was the result of extensive efforts to coordinate the activities of our agencies in this area.

Under this agreement, the Commission requests the safety ratings of applicants from BMCS before making a determination of fitness. If an applicant for temporary authority has an "unsatisfactory" safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we determine outweighs the safety consideration. If the safety rating is "conditional" or reflects "insufficient information", the Commission may grant the operating authority, and may condition the grant upon compliance with applicable safety regulations. If it is later found that the carrier is not in compliance with those regulations, BMCS may recommend that we revoke the temporary authority and we may do so without further proceedings.

Applications for permanent authority are handled somewhat differently. If BMCS is not satisfied as to the safety fitness of a carrier applying for permanent authority, it can petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance (OCCA) can also raise the issue of safety fitness and may ask BMCS to assist in presenting safety evidence to the Commission. When appropriate, the Commission will assign the application for oral hearing in order to consider the evidence fully. If questions are not raised regarding an applicant's safety fitness, the

Commission will determine the carrier's fitness based on the entire record, including the safety rating obtained from BMCS.

We believe that our procedures for determining the safety fitness of applicants for operating authority, together with the insurance requirements, are an adequate measure of an applicant's willingness and ability to operate safely. However, we also believe that they could be improved, and that section 13 of S. 2174 might offer a useful approach to dealing with this issue. The Commission would welcome the opportunity to continue our efforts with the Department of Transportation to improve the safety of our regulated carriers. We do not believe, however, that the establishment of fitness should be so restrictive and burdensome as to constitute an economic entry barrier.

There are certain practical problems with safety fitness determinations in licensing. First-time applicants usually have no operating record from which one can make an assessment of their safety. Further, many carriers do not own their own equipment. Instead, they do business by entering into leasing arrangements for equipment and drivers. Therefore, the equipment and drivers a carrier plans to use at the time of application filing may not be the same as those actually used after operations have begun. For this reason, direct regulation of equipment and drivers may be more effective.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our nation's highways. As we move toward a more competitive environment for the trucking industry, we must remain committed to doing all that we can to ensure that carriers operating under Commission authority continue to provide transportation that is safe, as well as economical.

Thank you again for this opportunity to present the Commission's views in this matter. Now, I would be glad to answer any questions you may have.

Senator DANFORTH. Mr. R. V. Durham, International Brotherhood of Teamsters.

STATEMENT OF R. V. DURHAM, DIRECTOR, SAFETY AND HEALTH DEPARTMENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY DAVE SWEENEY, DIRECTOR, LEGISLATIVE DEPARTMENT

Mr. DURHAM. Good morning, Mr. Chairman.

I am R. V. Durham, director of safety and health of the International Brotherhood of Teamsters. With me this morning is Dave Sweeney, director of our legislative department. We appreciate the opportunity to appear here today in support of S. 2174 and to express our gratitude to you, Mr. Chairman, and to the other members of the subcommittee for your continued interest in highway safety.

As the representative of hundreds of thousands of men and women who spend their working lives on the Nation's highways, we are vitally interested in any effort to increase the safety of that unique workplace.

I had the opportunity to appear before your subcommittee on March 10, 1983, and outline to you and the other members of this subcommittee some of our concerns in motor carrier safety. I will be brief and not take the committee's time to restate those issues.

Your bill, S. 2174, addresses many of our concerns in motor carrier safety and we are grateful for this. Turning to the specifics of the bill, there are several provisions that would constitute real advances in safety in our opinion:

One, regulatory authority with a clear mission to protect both the public and the driver;

Second, powers to enter and inspect and right of accompaniment by the employee and the employer or their representative;

Three, the duty to investigate the complaints of employees, using the worker as the first line of detection for unsafe operation;

And fourth, a penalty structure allowing DOT to levy civil forfeiture fines for violations of safety regulations.

I would like to digress just a second on that, Mr. Chairman. I heard the comments by the Deputy Secretary on their concerns about the way the penalties are structured, and I would just like to mention for the record that this was a very delicate area that was compromised out by the different interest groups.

We believe that the language as you have it drafted represents the thinking of the people that were brought together by your staff, and hopefully this language will remain intact as it is presently written.

Four positions in your bill are worth special note, and that is:

First, the joint DOT-NIOSH-DOL study of the health hazards associated with commercial truck operations. We believe this is very important in view of the National Cancer Institute study on bladder cancer which revealed that truckdrivers in the industry more than 10 years develop this type of cancer five times more than the general population. I should mention that we are currently also involved in current studies with NIOSH on lung cancer, exposure to diesel fumes. And of course, our concerns have been in other areas, in vibration, fumes, the noise, and the space for the employee to work in.

Second, the annual inspection requirement, which would reduce accidents caused by mechanical defects. We are not saying that the roadside inspection program is not good. We think it is and we believe it should be expanded. But the annual inspection, as we mentioned before, we believe that this will help reduce the accidents caused by the mechanical defects.

Third, the heavy truck research mandated and funded by section 14 of your bill. This would increase the funding fourfold from its current funding levels, and we believe that this is an area that is very important.

And fourth, the investigation and study of crash protection for truck occupants. As we all in the trucking community know, there has been very little done in that area. Some of the European nations have gotten involved in this, and we certainly welcome this provision. Especially when we see manufacturers going to fiberglas cabs in an effort to reduce the weight of their cab, we are very concerned about the integrity of that cab.

In summary, this bill has been a long time coming. Some of the provisions of S. 2174 were originally in S. 1390, passed by the Senate in the 96th Congress. Over the years many compromises, as I mentioned before, have been made to allow competing interests to support these provisions.

We are very grateful to you, Mr. Chairman, for sponsoring this legislation, first as title III of S. 1108 and currently as a separate bill, S. 2174, and we call on all other members of the trucking industry community to join with us in supporting your bill and working for its passage.

Thank you.

Senator **Danforth**. Thank you, Mr. Durham.

Thank you for your comments on the civil penalties section. You disagree with the Department of Transportation on that. You think that the language in the bill as drafted is the right language?

Mr. **Durham**. Yes; as we have mentioned before, Mr. Chairman, the employee in particular is already facing penalties and fines by the State and the municipalities, and they also face the question of discipline by their employer. So now for the first time, with the exception of the recordkeeping violations, the driver is now being faced with a third type of penalty, and we have agreed and compromised out in this area.

But to start applying it to all types of violations rather than those specified in the bill, I believe it destroys the delicate compromise that has been worked out by the various groups.

Senator **Danforth**. All right. Now, S. 2174 promotes uniformity among State safety regulations. What is your view of this? Do you believe uniformity improves safety?

Mr. **Durham**. We have generally supported uniformity in many different areas, because the carriers are operating interstate. It is very difficult for the carrier or the driver to try to meet different conflicting type regulations and so forth, so we would prefer to see them as uniform as possible, and we believe then that that helps everyone to better understand what their obligations are.

Senator **Danforth**. Thank you very much, sir.

Mr. **Durham**. You are certainly welcome. Thank you.

Senator **Danforth**. The next witness is Michael Greer, commissioner, West Virginia Public Utilities Commission, representing the National Association of Regulatory Utility Commissioners.

STATEMENT OF MICHAEL GREER, COMMISSIONER, WEST VIRGINIA PUBLIC UTILITIES COMMISSION, REPRESENTING THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY LINDA KENT, DIRECTOR OF PUBLIC RELATIONS AND CONGRESSIONAL RELATIONS

Mr. **Greer**. Good morning, Mr. Chairman.

I would like to introduce at the table with me Linda Kent, who is the director of public relations and congressional relations for the NARUC.

On behalf of the motorists, shippers, and other consumers of transportation services in West Virginia, I would like to thank you and the committee for the opportunity to express the position of the West Virginia Public Service Commission and the National Association of Regulatory Utility Commissioners, usually referred to as NARUC, on S. 2174, a bill proposing the Motor Carrier Safety Act.

Historically, our commission has recognized the need for addressing the vehicular safety of motor carriers operating in and through our State. This need has been met in part since 1973 by our adoption and enforcement of conventional vehicle safety rules in substantially the same form as promulgated by the U.S. Department of Transportation. We recently expanded this effort by the adoption of the uniform DOT safety rules governing the transportation of hazardous materials by motor vehicle.

We estimate that approximately 1 million commercial vehicles operate in and through West Virginia one or more times annually. Close to one-half of this number are for-hire carriers subject to the commission's safety jurisdiction.

Parenthetically, our commission's proposal to extend this safety jurisdiction to all commercial carriers is presently being considered by the West Virginia Legislature. Thus motor vehicle safety regulation, is a subject of considerable importance and interest in our State. Coal, petroleum, and the chemical industries play a major role in our economy. These products and their byproducts are transported in large part by the motor carrier industry.

Notably, our highway system is one of the most grueling in the East because of the rugged terrain it crosses, and our interstate system is a major and vital north-south link for commodities of all descriptions.

In fiscal year 1983 our personnel inspected 13,000 for-hire vehicles operating over this system, and 26 percent of these vehicles were placed out of service in accordance with U.S. Department of Transportation criteria. Although substantial, this record of serious equipment defects was an improvement over fiscal 1982, when 32 percent of the vehicles inspected were placed out of service.

These were serious violations—brakes, suspension problems. We believe these facts speak for themselves as an expression of West Virginia's need for a more comprehensive vehicle safety inspection program.

Recent regulatory reform at both the national and the State level has significantly increased the ease of entry into the motor carrier industry. But at this time the Federal Bureau of Motor Carrier Safety is represented by only two persons in the entire State of West Virginia. In short, for reasons both within and without our control, our role as safety regulator has become increasingly more demanding, and we expect this trend to continue for the foreseeable future.

We applaud the State grant-in-aid provision of the Surface Transportation Act, which will significantly augment our efforts in administering and enforcing safety regulations in our jurisdiction. We have recently applied, along with 39 other States—your State of Missouri included—for development funds to enable us to begin to participate in this important Federal-State cooperative effort for motor carrier safety pursuant to the appropriation from the highway trust fund.

In our State, among other things, these funds will be used for training of motor vehicle inspectors, the establishment of uniform inspection procedures, and the development of a data base. By sharing this data with the Department of Transportation and the other participating States and through the standardization of reporting procedures, we expect to develop in West Virginia a more efficient, less burdensome, yet more comprehensive transportation safety program.

We commend to your attention the NARUC-recommended amendment to create a National Motor Carrier Safety Advisory Committee, five members of which would be State commissioners, to advise the Secretary of Transportation in the establishment of uniform safety standards. We believe that State input into the development of training and research programs will be of critical importance to the successful implementation of this program.

NARUC has further recommended amendments which would limit Federal intervention and prescription of regulations which are purely intrastate in nature. We urge this committee to consider deleting the references to commerce which affects trade, traffic, or transportation. We believe this phrase to be unnecessarily ambiguous and will give rise to extensive litigation.

Interpreted literally, any action by the State could be interpreted to affect commerce. It is our position that standards defining an undue burden on commerce are well established in existing case law. If it is the intent of this provision to limit "affect commerce" to unreasonable burden, then the language is unnecessary and could be deleted. If the intent is to go beyond that well-established test, we believe that it is an undesirable intrusion and should be deleted.

In addition, we would suggest that section 11, which will preempt all existing State safety laws without providing for an exception for regulations which are wholly intrastate in nature, which may be consistent with Federal law, or which address unique State safety concerns—be amended with substitute language which will permit the States to adopt additional or more stringent safety rules which are not inconsistent with Federal standards.

And we would support the position made earlier this morning by the Department of Transportation about reversing this burden. This would allow more uniformity without undercutting the State effort to protect the safety of their citizens.

In conclusion, Mr. Chairman, the NARUC believes that efficient safety regulations combined with the commercial motor vehicle safety grants-in-aid program and the changes we have suggested will provide an effective, comprehensive highway safety initiative.

We thank you for sponsoring this measure and allowing us to be here.

Senator **Danforth**. Mr. Greer, thank you very much for your testimony. We very much appreciate it.

To what extent would your proposed changes effect uniformity? Maybe uniformity should not be a goal in safety regulation. Missouri was one of the so-called barrier States, and I used to do battle on that issue and say, well, this is a State matter, and eventually I lost the battle.

But everybody was trying to win that argument by saying we needed uniformity and it was too much of a burden to have different size vehicles on the highways of different States. So I was once on the side of nonuniformity, and now I find myself changing with the times. Should I revert to my previous self?

Mr. **Greer**. As you suggest, Senator, the times have changed. I do not think that there is need or desire for reversion. I think the NARUC as an association supports uniformity, and certainly our commission in West Virginia as early as 1973 essentially adopted a uniform standard. It is important and it is cost effective and efficient.

However, there are some unique safety conditions which do exist in some of the States which are perhaps unique and I would suggest probably minimal to the implementation of a national program. And the burden which is placed upon the States to prove a compelling need for laws to address these problems we think is quite heavy and is not necessary for effective implementation.

Senator **Danforth**. But if there wasn't some burden on the State to show some significant reason for different standards, would this not mean that there would be chaos and truckers would not know what standards to meet, or the State with the stiffest standard would end up governing all of the safety standards in the country, in effect?

Mr. **Greer**. Well, again, I think the case law limits those to unreasonable burden. I would think as a practical matter there would not be a large number of instances where we would find these kinds of exceptions, and I think reasonableness should be the standard.

Senator **Danforth**. What types of issues would you expect the National Motor Carrier Safety Advisory Committee which you recommend to consider?

Mr. **Greer**. There is a model which we hope you might mirror in establishing this committee that exists in the gas pipeline safety area. In that area they have had a technical advisory committee. It has been in existence for many years and it has included a number of State regulators.

We believe those of us who are out on the line, responsible for direct oversight of safety, are aware of some particularly technical problems, and the Secretary could benefit from this kind of input. We think this kind of insight would be helpful, particularly as further research may be necessary.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

INTRODUCTION

Mr. Chairman and Distinguished Members of the Subcommittee, my name is Michael Greer and I am a Commissioner with the West Virginia Public Service Commission. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today is Linda Kent, NARUC Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

We appreciate your invitation to testify on S. 2174, a bill proposing the Motor Carrier Safety Act. The NARUC has consistently endorsed legislative initiatives designed to improve the safety record of our Nation's motor carriers. In fact, the Association drafted a proposed Motor Carrier Safety Act in 1969 to provide for a program of Federal grants-in-aid to the States for the enforcement of Federal and State safety regulations.[1] Recognizing the continuing need for strict safety standards and enforcement procedures, the NARUC applauds Senator Danforth for introducing S. 1108, the proposed Highway Safety Act and for reaffirming his commitment to motor carrier safety by introducing and holding hearings on S. 2174.

Our primary interest in S. 2174 is two-fold: first, to ensure the establishment of an effective Federal/State cooperative effort in promulgating motor carrier safety regulations; and second, to ensure that traditional State jurisdiction over intrastate safety regulation is preserved. The remainder of my testimony will highlight those areas and will recommend for your consideration several pertinent amendments.

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[1] 81st NARUC Annual Convention Proceedings, pp. 178–185 (1969).

MOTOR CARRIER SAFETY GRANTS-IN-AID PROGRAM

Since passing the Highway Safety Act of 1966,[2] Congress has acknowledged that motor carrier safety warrants special regulatory treatment at both the Federal and State levels. The need for comprehensive legislation is increasingly apparent. Data compiled by the National Transportation Safety Board indicate that fatalities and severe loss of property due to motor carrier accidents remains a major national problem.

Commercial motor vehicle safety is of particular concern to State regulators because of the larger carriers operating on our highways due to the new size and weight standards mandated by the Surface Transportation Act of 1982.[3] In addition, the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982 significantly eased the entry requirements into these industries increasing the need for improved safety regulations.[4]

The NARUC wholeheartedly endorses the State grants-in-aid program included in section 402 of the Surface Transportation Act and the Association is pleased that S. 2174 [Sec. (7)] directs the Secretary of Transportation to take such actions as are necessary to carry out that program.

As the bill states in section 3(4), "interested State governments can provide valuable assistance to the Federal government in assuring that commercial motor vehicle operations are conducted safely and healthfully." We agree with the author of this legislation that a motor carrier safety program of national proportions must involve the States as true partners in investigating and enforcing carrier safety requirements. Under the program mandated by the Surface Transportation Act, Federal matching funds of up to 80 percent of the States' total program costs are to be provided to States which have submitted a plan of enforcement to the DOT to implement the Federally-mandated safety standards.

Our member commissions are aware of the advantages of this type of regulatory scheme as most participate in the rail and/or natural gas pipeline safety grants-in-aid programs.[5] The latter safety program has proved to be a model of Federal/State cooperation in its efficient implementation of interstate pipeline safety standards. We would suggest that the Subcommittee direct the Secretary to mirror the natural gas pipeline safety program to the extent practicable in administering the motor carrier grants-in-aid program.

A workable State/Federal partnership should ensure that the Secretary promulgate minimum Federal safety regulations to be adopted and enforced by the States, while leaving such areas as qualifications of inspectors, level of inspection effort and the expenditure of State and Federal monies to the discretion of the qualified State agencies designated to administer the program.

As you are aware, for fiscal year 1984 Congress appropriated eight million dollars from the highway Trust Fund in start-up funds for the program. As evidence of the States' commitment to the program, twenty-six States and U.S. territories have submitted requests for developmental or planning funding in order to enable them to meet the criteria established by DOT to enter the program.[6] Sixteen States which already meet the necessary criteria have requested implementation funding for the training and salaries of State safety inspectors.[7] Utilizing State resources and personnel in carrying out a grants-in-aid program ensures that Federal safety standards are monitored and enforced in a skilled manner at only a portion of the total cost. During this era of fiscal restraint, such an arrangement is practical and efficient. More important, these programs enable Federal and State governments to work together to protect lives and to prevent property damage.

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[2] 23 U.S.C. Sec. 401.

[3] 49 U.S.C. Sec. 2302.

[4] 94 Stat. 793 (1980) and 96 Stat. 1102 (1982), respectively.

[5] The natural gas pipeline safety grants-in-aid program, administered by DOT's Research and Special Program Administration, was authorized by Section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Sec. 1674). The rail safety grants-in-aid program, administered by the Federal Railroad Administration, was authorized by Section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. Sec. 435).

[6] The twenty-six States and U.S. territories are: Alabama, Arkansas, Colorado, Connecticut, Delaware, Guam, Hawaii, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, Rhode Island, Samoa, South Carolina, South Dakota, Texas, Virginia, West Virginia and Wisconsin. Four other jurisdictions (Indiana, New York, the Northern Marianas and Puerto Rico) have similar applications pending.

[7] The sixteen States are: Arizona, Idaho, Illinois, Iowa, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oregon, Tennessee, Utah and Washington. Kentucky has a similar application pending.

We hope the Subcommittee will strongly endorse this program and will provide the necessary oversight to ensure its success. However, in order to further encourage Federal, State and industry cooperation under the safety grants-in-aid plan, the NARUC would recommend an amendment to create a National Motor Carrier Safety Advisory Committee within DOT to assist the Secretary in developing rules and regulations to institute the safety program pursuant to section 7(b) of the bill. This committee would be comprised of twenty members appointed by the Secretary, five of whom would be State commissioners. The purpose of the committee would be to consider and advise the Secretary as to the establishment of motor carrier safety standards and as to any training, research and development programs which may be necessary.

We believe that the creation of this advisory panel, similar to the working group proposed by the Secretary in H.R. 4518 to consider uniform motor carrier regulations, would substantially benefit the implementation of the motor carrier safety program. An identical body, the Technical Pipeline Safety Standards Committee created under the Natural Gas Pipeline Safety Act, greatly contributed to the success of the pipeline safety grants-in-aid program. The panel we are proposing would provide a forum wherein experts in motor carrier safety regulation would be able to resolve program disruptions and potential conflicts. The inclusion of State commissioners would permit the Secretary to hear the views of those officials who are actually implementing and enforcing the Federal standards. We hope the members of the Subcommittee will include such a provision.[8]

STATE REGULATION OF INTRASTATE TRANSPORTATION SAFETY

As explained above, the States can play an important role in ensuring the safety of our Federal and State highways. The NARUC is not opposed to a system of uniform regulations for interstate motor carriers as demonstrated by our support for the safety grants-in-aid program. One of the major policy principles of the Association is the "promotion of uniformity of regulation and cooperation among regulatory agencies". To that end, the NARUC throughout its long history has sought to develop and implement uniform regulatory policies in all areas of fixed utility and transportation carrier regulation. In fact, as early as 1936 the NARUC recommended that the States conform their motor carrier safety standards with those prescribed by Federal authority for interstate carriers.[9] We are proud of our record in this area and continue to explore additional areas in which greater uniformity may be beneficial. However, the NARUC does not believe that the framework for uniformity should be so rigid as to sacrifice flexibility thereby denying the States the opportunity to address their unique safety problems.

In addition, we strongly oppose all efforts by the Federal government to preempt the States' legitimate authority to regulate matters within their boundaries. It is our belief that the public interest is best served when decisions materially affecting the quality of citizens' lives are made by officials who are easily accessible to those citizens. State regulators are in a far better position to be knowledgeable about specific local safety needs than is the DOT. Federal jurisdiction should be limited to interstate matters which are beyond effective State regulation.

There are two distinct areas in S. 2174 which pose a substantial threat to legitimate State authority over motor carrier safety. However, we believe that with the following amendments our concerns can be resolved and we respectfully urge the Subcommittee to adopt our proposals.

First, by extending the coverage of the bill to commercial motor vehicles in or affecting interstate commerce, the measure will unfairly impinge upon an area of traditional State authority. The States have maintained a highly effective record in enforcing intrastate motor carrier safety standards.[10] We, therefore, recommend that the Subcommittee preserve that effort by deleting only those references to commerce which "affects trade, traffic or transportation" contained in Sections 2, 4 and 9 of the bill.[11]

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[8] Proposed statutory language to create a Motor Carrier Safety Advisory Committee is contained in Appendix A.

[9] *48th NARUC Annual Convention Proceedings*, pp. 148–149, 170 (1936).

[10] See Appendix B.

[11] This amendment may be made to Section 2 of S. 2174 by striking the words "or affecting" on line 7 of page 1.

This amendment may be made to Section 4(1) of S. 2174 by inserting a semicolon after the word "State" on line 2 of page 3 and deleting the remainder of that paragraph.

This amendment may be made to Section 9(12)(A) of S. 2174, by inserting a semicolon after the word "State" on line 14 of page 16 and deleting the remainder of that paragraph.

Second, Section 11 of S. 2174 contains several provisions of concern to State regulators. It places an unnecessarily strict burden on States to justify existing State laws relating to motor carrier safety by forcing them to demonstrate a compelling local safety need for those laws. We have seen no evidence to date that existing State laws as to safety have unduly burdened interstate commerce. We strongly object to this provision which provides the Secretary with what is in essence a veto power over existing State law. Since the bill's definition of interstate commerce may preempt wholly intrastate safety regulation, this provision would permit the Secretary's veto power to extend into an area clearly beyond the jurisdiction of the DOT.

The inclusion of language in Section 11 to allow existing State laws to remain in effect only until the Secretary has adopted a regulation on the same subject will serve to create uncertainty as to which standards will ultimately apply to motor carriers and undercuts the present safety enforcement efforts of the States.

Paragraph (b) of Section 11, authorizing Federal preemption of State hours-of-service regulation is another unnecessary intrusion into the current regulatory jurisdiction of the States. Overall, Section 11 substitutes the judgment of the Secretary for the judgment of State officials in determining the local conditions which dictate the need for specific safety regulations.

The problems we have outlined above can be easily resolved by removing the extraordinary power of the Secretary over existing State law and by permitting those State laws consistent with Federal regulations to remain in effect after the legislation is enacted into law. We propose that the Subcommittee substitute the language contained in Section 312(a) of S. 1108 as originally introduced for the present Section 11.[12] This approach would allow for uniformity without sacrificing State efforts to preserve the safety of their citizens.

CONCLUSION

S. 2174 reaffirms this Nation's commitment to ensuring the safety of our highways. The NARUC believes that efficient safety regulations, combined with the commercial motor vehicle grants-in-aid program and the changes we have suggested will provide an effective and comprehensive motor carrier safety initiative which will be responsive to the individual needs of each State. Your support for our position will be greatly appreciated.

APPENDIX A

This amendment may be made to S. 2174 by adding a new paragraph (d) to section 7 containing the following language:

"(c) There is established in the Department of Transportation a National Motor Carrier Safety Advisory Committee, composed of the Secretary or an officer of the Department designated by the Secretary, who shall be Chairman, the Federal Highway Administrator, and 20 members appointed by the Secretary, five of whom shall be State commissioners nominated by the national organization of the State commissions. (49 U.S.C. Sec. 11506) The remainder of the appointed members, having due regard for the purposes of this subsection, shall be selected from among representatives of public and private interests, contributing to, affected by, or concerned with ther conduct of motor carrier safety programs, including national organizations of motor carrier vehicle manufacturers, owners, operators, as well as research scientists and other individuals who are expert in this field. Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 4703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

"The National Motor Carrier Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department relative to the conduct of motor carrier safety programs. The Committee is authorized (1) to review training, research or development projects or programs submitted to or recommended by it relative to the conduct of motor carrier safety programs and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to the strengthening of such motor carrier safety programs in the public interest; and (2) to review, prior to issuance, regulations and standards proposed to be issued by order of the Secretary under the provisions of this Act and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

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[12] This amendment may be made to S. 2174 by deleting Section 11 in its entirety and inserting in lieu thereof the following new Section 11:

"Any State agency may adopt additional or more stringent safety rules, regulations, standards, or orders for commercial motor vehicle safety if such rules, regulations, standards, or orders are not inconsistent with the Federal rules, regulations, standards, and orders issued under this Act."

"The National Motor Carrier Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

"(b) The Secretary shall provide such staff and facilities to the National Motor Carrier Safety Advisory Committee from among the personnel and facilities of the Department of Transportation as are necessary to carry out the functions of such Committee.

"(c) The Secretary is authorized and directed to assist, cooperate and consult with other Federal departments and agencies, State and local governments, private industry, the national organization of the State commissions, and other interested parties, in order to carry out the provisons of this section."

APPENDIX B

TABLE 108.—REGULATION OF MOTOR FREIGHT CARRIERS (SCOPE OF AGENCY REGULATION OF MOTOR FREIGHT CARRIERS)

Agency	Entry	Operating territory	Abandonment	Rates	Accounting	Service	Safety	Security issues	Mergers and acquisitions	Insurance	Reporting	Interstate motor freight carrier registration
Common carriers												
ICC	X	X	X	X	X	X	X	X	X	X	X	
Alabama PSC	X	X	X	X	X	X	X		X	X	X	X
Alaska TC	X	X	X	X	X	X	X		X	X	X	X
Arizona[16]												
Arkansas TC	X	X	X	X		X	X		X	X	X	X
California PUC	X	X	X	X	X	X	(17)	X	X	X	X	X
Colorado PUC	X	X	X	X	X	X	X	X	X	X	X	X
Connecticut DPUC	X	X	X	X	X	X	(9)	X	X	X	X[1]	X
Delaware TA												
Florida PSC[9]												
Georgia PSC	X	X	X	X	X	X	X	X	X	X	X	X
Hawaii PUC	X	X	X	X	X	X	(10)		X	X	X	X
Idaho PUC	X	X	X	X	X	X	X		X	X	X	X
Illinois CC	X	X	X	X	X	X			X	X	X	X
Indiana PSC	X	X	X	X	X	X	X		X	X	X	X
Iowa TRA	X[2]	X[2]	X	X[2]	X	X[2]	X		X	X[2]	X	X
Kansas SCC	X	X	X	X	X	X	X		X	X	X[1]	X
Kentucky DVR	X	X	X	X	X	X	X		X	X	X[1]	X
Louisiana PSC	X	X	X	X	X	X		X	X	X	X	X
Maine[19]												
Maryland PSC[2]	X	X	X	X	X	X	X	X	X	X[3]	X	
Massachusetts DPU[11]	X	X	X	X	X	X	X	X	X	X[8]	X[1]	X
Michigan PSC	X	X		X	X	X	X(18)	X	X	X	X	X
Minnesota DOT				X(13)	X	X	X			X	X	X
Minnesota PUC	X	X	X						X			
Mississippi PSC	X	X	X	X	X	X	X		X	X	X	X
Missouri PSC	X	X	X	X	X	X	X	X	X	X	X	X
Montana PSC	X	X	X	X	X	X	X		X	X	X	X
Nebraska PSC	X	X	X	X	X	X	X		X	X	X	X
Nevada PSC	X	X	X	X	X	X	X	X	X	X	X	X
New Hampshire PUC	X	X	X	X[7]					X	X[8]		X
New Jersey DOT												

TABLE 108.—REGULATION OF MOTOR FREIGHT CARRIERS (SCOPE OF AGENCY REGULATION OF MOTOR FREIGHT CARRIERS)—Continued

Agency	Entry	Operating territory	Abandonment	Rates	Accounting	Service	Safety	Security issues	Mergers and acquisitions	Insurance	Reporting	Interstate motor freight carrier registration
New Mexico SCC	X	X	X	X		X				X		X
New York DOT	X	X	X	X	X	X	X		X	X	X	
North Carolina UC	X	X	X	X	X	X	X	X	X	X	X[1]	X
North Dakota PSC	X	X	X	X	X	X	X	X	X	X	X	X
Ohio PUC	X	X	X	X	X	X	X	X		X	X	X
Oklahoma CC	X	X	X	X	X	X			X	X		X
Oregon PUC	X	X	X	X	X	X	X		X(14)	X	X	X
Pennsylvania PUC	X	X	X	X	X	X	X	X	X	X	X	
Puerto Rico PSC	X	X	X	X	X	X	X	X		X	X	
Rhode Island PUC	X	X		X	X	X	X	X	X	X	X	X
South Carolina PSC	X	X	X	X	X	X	X		X	X	X	X
South Dakota PUC	X	X	X	X	X	X	X		X	X	X	X
Tennessee PSC	X	X	X	X	X	X	X	X	X	X	X	X
Texas RC	X	X	X	X	X	X	X		X	X	X	X
Utah PSC	X	X	X	X	X	X	X(15)		X	X	X	X
Vermont AT[2] [12]	(1)	X	X	X	X	X	X	(5)	X			
Virgin Islands PSC												
Virginia SCC	X	X	X	X		X		X	X	X	X	X
Washington UTC	X	X	X	X	X	X	X	X[5]	X	X	X	X
West Virginia PSC	X	X	X	X	X	X	X		X	X	X	X
Wisconsin TC	X	X	X	X	X	X				X	X	X
Wyoming PSC	X	X	X	X	X	X	X	X	X	X	X	X
Contract carriers												
ICC	X	X	X	X	X	X			X	X	X	
Alabama PSC	X	X	X	X	X	X	X		X	X	X	X
Alaska TC	X	X	X		X	X	X		X	X	X	X
Arizona[16]												
Arkansas TC	X	X	X	X		X	X		X	X	X	X
California PUC	X	X	X	X	X		(17)		X	X	X	X
Colorado PUC	X	X	X	X	X	X	X	X	X	X	X	X
Connecticut DPUC	X	X	X	X	X	X	(6)		X	X	X[1]	X
Delaware TA												

Florida PSC[9]												
Georgia PSC	X	X	X	X	X	X	X	X	X	X	X	X
Hawaii PUC	X	X	X	X	X	X	([10])		X	X	X	X
Idaho PUC	X	X	X	X	X	X	X		X	X	X	X
Illinois CC	X	X	X	X	X	X			X	X	X	X
Indiana PSC	X						X			X		X
Iowa TRA							X			X		X
Kansas SCC	X	X	X	X	X	X	X		X	X		X
Kentucky DVR	X	X	X	X	X	X	X		X	X		X
Louisiana PSC	X	X		X	X	X		X	X	X	X	X
Maine[10]												
Maryland PSC[2]	X	X	X	X	X	X	X	X	X	X[3]	X	
Massachusetts DPU[11]	X	X	X	X	X	X	X	X	X	X[8]	X[1]	X
Michigan PSC	X	X	X	X	X	X	([13])	X	X	X	X	X
Minnesota DOT				([3])	X	X	X			X	X	X
Minnesota PUC	X	X	X						X			
Mississippi PSC	X	X	X	X	X	X	X		X	X	X	X
Missouri PSC	X	X	X	X	X	X	X		X	X		X
Montana PSC	X	X	X	([4])	X	X	X		X	X	X	X
Nebraska PSC	X	X	X	X	X	X	X		X	X	X	X
Nevada PSC	X	X	X	X	X	X	X	X	X	X	X	X
New Hampshire PUC	X	X		X[7]					X	X[8]		X
New Jersey DOT												
New Mexico SCC	X	X	X	X		X				X		X
New York DOT	X	X	X	X	X	X	X		X	X	X	
North Carolina UC	X	X	X	X	X	X	X	X	X	X	X[1]	X
North Dakota PSC	X	X	X	X[4]	X	X	X	X	X	X	X	X
Ohio PUC	X	X	X	X	X	X	X	X		X	X	X
Oklahoma CC	X	X	X	X	X				X	X		X
Oregon PUC	X	X	X	X	X	X	X		([14])	X	X	X
Pennsylvania PUC	X	X	X	X	X	X	X	X	X	X	X	
Puerto Rico PSC	X	X	X	X	X	X	X	X		X	X	
Rhode Island PUC	X	X		X	X	X	X	X	X	X	X	X
South Carolina PSC	X	X	X	X	X	X	X		X	X	X	X
South Dakota PUC	X	X	X	X	X	X	X		X	X	X	X
Tennessee PSC	X	X	X	X	X	X	X	X	X	X	X	X
Texas RC	X	X	X	X	X	X	X		X	X	X	X
Utah PSC	X	X	X		X	X	([15])		X	X	X	X
Vermont AT[2] [12]												
Virgin Islands PSC												

TABLE 108.—REGULATION OF MOTOR FREIGHT CARRIERS (SCOPE OF AGENCY REGULATION OF MOTOR FREIGHT CARRIERS)—Continued

Agency	Entry	Operating territory	Abandonment	Rates	Accounting	Service	Safety	Security issues	Mergers and acquisitions	Insurance	Reporting	Interstate motor freight carrier registration
Virginia SCC	X	X				X				X		X
Washington UTC	X	X	X	X	X	X	X	X[5]	X	X	X	X
West Virginia PSC	X	X	X	X	X	X	X		X	X	X	X
Wisconsin TC	X	X	X	X	X	X				X		X
Wyoming PSC	X	X	X	X			X			X		X

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[1] Annual reports are required to be filed showing intrastate operations.
[2] Regular route carriers of general commodities including common and contract flammable carriers.
[3] Flammable tank truck carriers only.
[4] Contract (charter) carrier rates filed with the PSC. PSC prescribes minimum rates upon petition.
[5] No jurisdiction if securities subject to ICC regulation.
[6] Under jurisdiction of Connecticut Motor Vehicle Department.
[7] Requires filing only.
[8] Cargo only.
[9] Regulatory authority repealed by Ch. 76–168, as amended by ch. 77–457, Laws of Florida.
[10] Function of Department of Transportation, Office of Highway Safety Coordinator.
[11] Commercial Motor Vehicle Division; intrastate operations only.
[12] Vermont Agency of Transportation, State Administration Building, Montpelier, Vermont 05602.
[13] All rates filed with Minnesota DOT.
[14] Oregon PUC has jurisdiction only with respect to merging of carriers possessing no interstate operating authority. Mergers approved by the ICC are accepted by Oregon without additional filing. Application to the PUC must be made for acquisition of non-incorporated carriers.
[15] Under jurisdiction of Utah State Department of Transportation.
[16] Due to deregulation of economic factors, Arizona no longer regulates transportation industry, except safety, which is now enforced by the Arizona Department of Public Safety. Contact Arizona Department of Transportation for insurance and registration.
[17] Under jurisdiction of California Highway Patrol.
[18] Michigan State Police have jurisdiction.
[19] Pursuant to Chapter 469 of the Laws of 1981, effective January 1, 1982, the jurisdiction of the Maine PUC over surface transportation was transferred as follows: (1) Transportation of passengers to the Maine Department of Transportation; (2) Transportation of freight to the Bureau of State Police, Department of Public Safety. See 35 M.R.S.A. §§ 1501 et seq. (1982).

TABLE 109.—NUMBER OF MOTOR FREIGHT CARRIERS UNDER AGENCY JURISDICTION

Agency	Motor freight carriers					
	Common carriers			Contract Carriers		
	Number of carriers	Number of vehicles	Citation of jurisdictional authority	Number of carriers	Number of vehicles	Citation of jurisdictional authority
ICC [1]	14,183		49 U.S.C. 10521–10529	5,379		49 U.S.C. 10521–10529
Alabama PSC	329		Code of Ala. Chapter 37–3.	114		Code of Ala., Chapter 37–3.
Alaska TC	211		A.S. 42.10	220		A.S. 42.10.
Arizona [2]						
Arkansas TC	2,100		Act 397–1955	200		Act 397–1955.
California PUC	8,170	[3] 203,540	Calif. P.U. Code 1063, 1063.1, 1063.5.	16,858		Calif. P.U. Code 3541–5319.
Colorado PUC	4,648		Sec. 40–1–102 CRS 1973	1,419		Sec. 40–11–101 CFS 1973.
Connecticut DPUC	[4] 495	[5] 231,136		[6] 50		
Delaware TA	0	0		0	0	
Florida PSC	0	0		0	0	F.S. 323.04.
Georgia PSC	[1] 1,963	[8] 19,182	Ga. Code, Title 46, Ch. 7	221		Ga. Code, Title 46, Ch. 7.
Hawaii PUC	221	2,660	Ch. 271, HRS	28	170	
Idaho PUC [9]	429		Ch. 8, Title 61, Idaho Code.	84		Ch. 8, Title 61, Idaho Code.
Illinois CC	6,241		Ch. 95½, Ill, Rev. Stat., Sec. 18.	801		Ch. 95½, Ill, Rev. Stat. Sec. 18.
Indiana PSC	[10] 755		Ind. Code 1971, 8–2–7–1, 8–2–7–51.	[11] 428		Ind. Code 1971, 8–2–7–1.
Iowa TRA	[12] 214		Ch. 325, 327 Iowa Code, 1981.			Ch. 327 Iowa Code, 1981.
Kansas SCC	16,000	225,000	Kan. Stats. Ann., Ch. 66			Kans. Stats. Ann., Ch. 66.
Kentucky DVR	[13] 30,500	[13] 435,000	KRS 281.600	[6] 140		KRS 281.600.
Louisiana PSC	308	[14] 25,283	Constitutional and Statutory.	141		Constitutional and Statutory.
Maine [15]						
Maryland PSC	51	1,887	Article 78	15	254	Article 78.
Massachusetts DPU			Mass. General Law 159B			Mass. General Law 159B.
Michigan PSC	2,429	31,770	Act 254, P.A. 1933, Amended.	561	4,999	Act 254, P.A. 1933, Amended.
Minnesota PUC	113		Minn. Stats. Ch. 221	2,376		Minn. Stats., Ch. 221.
Mississippi PSC	[16] 240			41		
Missouri PSC	1,229		Ch. 390 RSMo.	158		Ch. 390 RSMo.
Montana PSC			Title 69, MCA			Title 69, MCA.
Nebraska PSC	949	5,518	75–301 et seq.			
Nevada PSC	324		Nev. Revised Stats. Ch. 706.	11		Nev. Revised Stats., Ch. 706.
New Hampshire PUC	640	1,336	RSA 375–A and 375–B	950	1,074	RSA 375–B.
New Jersey DOT						
New Mexico SCC	6,500	([17])	N.M. Motor Carrier Act (65–2–81) et seq.	36	([17])	N.M. Motor Carrier Act (65–2–81) et seq.
New York DOT	[18] 1,583		Trans. Law; Title 17, NYCRR.	353		Trans. Law; Title 17, NYCRR.
North Carolina UC	[19] 628		N.C. Gen. Stats., Ch. 62–3(23) a. 3, 4.	156		N.C. Gen. Stats., Ch. 62–3(23) a. 3, 4.
North Dakota PSC	290	2,800	49–07–01 NDCC	40	140	49–07–01 NDCC.
OHIO PUC	[20] 933	[21] 64,740	Title 49, Ohio Revised Code.	[22] 726	[21] 12,680	Title 49, Ohio Revised Code.
Oklahoma CC						
Oregon PUC [23]	[6] 428	16,372		[6] 113	1,298	
Pennsylvania PUC	2,651		Pa. Public Utility Law	368		Pa. Public Utility Law.
Puerto Rico PSC	7,056	10,167				
Rhode Island PUC	[24] 823	1,200	Title 39, Ch. 12, Sec. 1–44.	14	200	Title 39, Ch. 12, Sec. 9 R.I.G.L.
South Carolina PSC	794	9,044		173	1,016	S.C. Code Ann., Sec. 58–23–10 et seq. 1976, Amended.

TABLE 109.—NUMBER OF MOTOR FREIGHT CARRIERS UNDER AGENCY JURISDICTION—Continued

Agency	Motor freight carriers					
	Common carriers			Contract Carriers		
	Number of carriers	Number of vehicles	Citation of jurisdictional authority	Number of carriers	Number of vehicles	Citation of jurisdictional authority
South Dakota PUC	[6] 993		S.D. C.L. 49–28	110		S.D. C.L. 49–28.
Tennessee PSC	[3] 5,052		65–1501 et seq.			
Texas RC	[25] 1,863	64,874	Tex. Rev. Civil Stat. Ann., Art. 911b.	261	4,715	Tex. Rev. Civil Stat. Ann., Art. 911b.
Utah PSC	[3] 6,758		Utah Code, Sec. 54–6–4	(3)		Utah Code, Sec. 54–6–8.
Vermont AT [26]	14		Title 30, VSA Sec. 203			
Virgin Islands PSC						
Virginia SCC	22		Va. Code, Title 56, Ch. 12	6,500		Va. Code, Title 56, Ch. 12.
Washington UTC	10,013		Title 81, Rev. Code of Wash.	212		Title 81, Rev. Code of Wash.
West Virginia PSC	[3] 996	2,016	Ch. 24–A, W. Va. Code	480	970	
Wisconsin TC	[27] 216		Wisc. Statutes, Ch. 194	[27] 22,237		Wisc. Statutes, Ch. 194.
Wyoming PSC	55		Sec. 37–8–201, Wyo. Stats., 1977.	2,033		Sec. 37–8–108, Wyo. Stats. 1977.

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[1] Reporting for both Common Carriers and Contract Carriers is limited to Class I and Class II motor carriers of property, effective 1/1/80. This requirement is now for approximately 3,100 Class I and Class II carriers.

[2] Due to deregulation of economic factors, Arizona no longer regulates transportation industry, except safety, which is now enforced by the Arizona Department of Public Safety. Contact Arizona Department of Transportation for insurance and registration.

[3] Total number motor freight carriers (common and contract).

[4] Intrastate only. In addition 8,776 interstate (ICC regulated).

[5] Intrastate and interstate property carriers.

[6] Intrastate only.

[7] Intrastate. In addition approximately 20,000 additional carriers, both regulated and exempt, operating in excess of 350,000 vehicles solely in interstate operations which must register authority vehicles and comply with insurance requirements and safety regulations.

[8] Figure includes motor freight common and contract carriers, and motor passenger common carriers—breakdown unknown.

[9] Idaho deregulated carriers of livestock, sand, gravel and aggregates thereof, agricultural products and livestock feed on 1 July 1980, by exempting those commodities from the Idaho Motor Carrier Act—exempt household goods carriers on 1 July 1982.

[10] Intrastate only: Interstate=56,000, approximate.

[11] Intrastate only: Interstate=2,000, approximate.

[12] Includes liquid carriers, does not include 10,000 irregular route truck operators.

[13] Total for-hire motor carriers, common and contract; and private carriers for purposes of motor fuel tax.

[14] This figure includes all intrastate vehicles, both freight and passenger.

[15] Pursuant to Chapter 469 of the Laws of 1981, effective January 1, 1982, the jurisdiction of the Maine PUC over surface transportation was transferred as follows: (1) Transportation of passengers to the Maine Department of Transportation; (2) Transportation of freight to the Bureau of State Police, Department of Public Safety. See 35 M.R.S.A. §§ 1501 et seq. (1982).

[16] Four thousand eight hundred thirteen (4,813) interstate common and contract carriers.

[17] Number of vehicles reported to Motor Transportation Department.

[18] Includes New York City household goods movers.

[19] Includes 27 carriers which hold both common and contract carrier authority and 4 rail motor freight carriers.

[20] Intrastate only: interstate registered—3,788.

[21] Intrastate only: interstate registered—unknown.

[22] Intrastate only: interstate registered—2,003.

[23] An additional 2,835 carriers transporting logs, sand and gravel subject to entry and safety regulation.

[24] Intrastate only: approximately 6,000 interstate carriers registered.

[25] Intrastate only: interstate registered and exempt—9,771.

[26] Vermont Agency of Transportation, State Administration Building. Montpelier, Vermont 05602.

[27] Motor carriers.

Source: 1982 Annual Report on Utility and Carrier Regulation, by the National Association of Regulatory Utility Commissioners.

Senator **DANFORTH**. Thank you very much, sir.

Next there is a panel: Mr. Will Johns, American Trucking Associations; Richard Henderson, Private Truck Council of America; and Marshall Siegel, Independent Truck Owner-Operator Association.

Mr. Johns, would you like to start?

STATEMENTS OF WILL JOHNS, MANAGING DIRECTOR, TECHNICAL SERVICES DIVISION, AMERICAN TRUCKING ASSOCIATIONS, INC.; RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC., ACCOMPANIED BY JOHN A. DeVIERNO, COUNSEL; AND MARSHALL SIEGEL, EXECUTIVE DIRECTOR, INDEPENDENT TRUCK OWNER-OPERATOR ASSOCIATION

Mr. JOHNS. Yes. Mr. Chairman and members of the committee. My name is William Johns. It is my privilege to present this statement on behalf of American Trucking Associations. I am also speaking on behalf of the chairman of the ATA's Safety and Engineering Policy Committee, Mr. Lawrence Stern. Mr. Stern has represented ATA previously in hearings held by this committee on truck safety matters, and he asked me to express his regrets that he is unable to participate today.

In past statements, ATA has given details of its safety activities and of the improvement of the truck safety record in recent years. We will be happy to provide additional information on those matters if it is the desire of the committee.

We hold to our belief that most truck drivers and most trucking companies are operating in a safe manner. We recognize, however, that there are some who are not. Complaints of the public about unsafe practices by some truckdrivers appear to have increased recently. There has also been an increase in the number of trucking companies since passage of the Motor Carrier Act of 1980. I understand that this increase is from a level of 17,000 regulated carriers at the time of the Motor Carrier Act and it is now about 30,000 motor carriers.

Most of these companies appear to be one-truck operations, and therefore it is difficult, if not impossible, for the Bureau of Motor Carrier Safety and for State agencies to monitor the safety of operations of those companies through the inspection of records and terminal facilities, as is done with larger motor carriers.

We believe that S. 2174 can be an effective tool for control of these problems through those provisions which deal with promotion of traffic law compliance and the provisions which deal with inspection of vehicles. In our written statement, we have recommended that the study mandated by section 14 of S. 2174 should focus on such things as the extent to which there is noncompliance with traffic laws and safety regulations by truckdrivers, and the reasons therefor.

Programs of enforcement agencies should be examined to determine how they can be made more effective in improving truckdriver compliance with traffic laws. We have also recommended a report to Congress of the findings of such a study, along with recommendations for improvement of traffic law enforcement.

In that portion of our statement which deals with inspections, we have urged that S. 2174 include a program for grants to States for the specific purpose of increasing the number and effectiveness of roadside inspections. Such inspections are an excellent tool for monitoring the safety of operation of all motor carriers, large and small. It is a mechanism for reaching small carriers that could not be reached through audits and inspections of terminals and records.

An expanded roadside inspection program would help offset any potential safety problems resulting from the recent increase in the number of small motor carriers. ATA strongly endorses roadside inspections because they are much more effective than annual State inspections, they provide a greater incentive for motor carriers to maintain trucks in safe operating condition throughout the year, they provide an opportunity to check the condition of the load, the driver and the vehicle, they are more appropriate for high-mileage vehicles, and they result in taking unsafe drivers, unsafe vehicles, and unsafe loads off the road.

Our written statement provides much more detail on these and other matters which we believe will improve S. 2174 and benefit the cause of truck safety. We hope that our recommendations will receive favorable consideration by the committee.

That concludes my remarks, Mr. Chairman. I will be happy to answer any questions or provide additional information as appropriate.

[The statement follows:]

STATEMENT OF AMERICAN TRUCKING ASSOCIATIONS, INC.

These comments by American Trucking Associations, Inc. are evidence of our continuing support for the development of truck safety legislation that will be effective in reducing the number and severity of truck related accidents.

Over a period of several years our representatives have worked closely with the Senate and its Staff for such legislation. We have appreciated the opportunity to present our views on drafts of legislative proposals, and we are appreciative of the favorable consideration given in the past to some of our recommendations.

Our comments herein reflect the position of the ATA Executive Committee taken at its meeting on June 15, 1983 and based on its consideration of the provisions of Title III of S. 1108, the predecessor of S. 2174. We believe that adoption of our recommendations is essential for S. 2174 to be practical and effective, and to enable ATA to give its support specifically to S. 2174.

SECTION 8: DUTY TO INVESTIGATE COMPLAINTS; PROTECTION OF COMPLAINANTS

The provisions of S. 2174 concerning the duty of the Secretary to investigate employee complaints are not different from those in S. 1108. ATA firmly believes that they need revision to allow the Secretary the discretion of deciding whether or not to investigate a particular complaint.

Like other legislation which is designed to protect the rights of employees this Section is well intended but it provides an opportunity for abuse by employees who might generally be disgruntled about their employment for reasons other than safety. We do not disagree with the philosophy of protecting employees who are faced with legitimate and significant safety problems, but we believe that every effort should be made to protect employers from harassment by those employees who would utilize the provisions of Section 8 for purposes other than safety protection. There is a need to minimize the potential for undue burdens on employers and on the Secretary, who can become so involved and overburdened with bogus complaints and complaints of relatively no substance that it will be impossible to carry out an effective program for the investigation of legitimate complaints.

In a previous statement, ATA pointed out that at one time the Occupational Safety and Health Administration was so overburdened with complaints that had little or no substance that it was unable to conduct an effective program.

At the present time there are indications of employee abuse of Section 405 provisions of the Surface Transportation Assistance Act of 1982 which is designed to protect employees from discriminatory action on safety related matters. Section 405 requires that the Secretary of Labor investigate every complaint alleging discrimination. It does not give the Secretary discretion to decide whether or not to make an investigation. In the short time since implementation of Section 405 a number of complaints have been filed. Some of these complaints have been so obviously based on trumped up charges by the employee that one official has stated informally that there is apparent abuse of the law. If the abuse continues, the ability of the Labor Department to properly handle legitimate complaints will be jeopardized, employers will be heavily burdened by the investigation of bogus complaints and by procedural requirements that must be complied with, and employees who have been discriminated against will not get the attention and protection intended by Section 405.

Section 8 of S. 2174 has the potential for similar problems if its mandate for investigation of every employee complaint is not revised.

The ATA Executive Committee has taken the position that problems of abuse can be minimized and the provisions of Section 8 can be more effective if the employee complaint investigation requirement is made discretionary on the part of the Secretary.

ATA urges revision of Section 8 to give the Secretary the discretion needed for an effective program of investigating employee complaints.

SECTION 9: PENALTIES

S. 2174 continues the requirement of S. 1108 for a civil penalty of up to $10,000 for a substantial health or safety violation which would reasonably lead to, or has resulted in, serious personal injury or death. It also continues the dual standard in S. 1108 by which employers can be penalized under any circumstances for a substantial health or safety violation whereas an employee can be penalized only if the employee's action constituted gross negligence or reckless disregard for safety.

Motor carriers believe that the civil penalty provisions of S. 2174 provide an opportunity for gross injustice because of the heavy penalty that can be levied for a single violation. The decision of whether or not to impose a penalty, and the amount of the penalty is based on the subjective judgement of agents of the Secretary. In the past civil penalties have been imposed on motor carriers which were not justified or which were unfair in the amount of the penalty. Despite the language in Section 9 which cautions the Secretary to consider certain factors in determining the amount of civil penalties to be imposed for violations there is no reason to believe that the penalties imposed under the authority of S. 2174 will be any more equitable than those imposed under other laws. A motor carrier with with a good safety record and safety program will be subject to civil penalty even though the violation for which the penalty is imposed might have been an unusual occurrence which is not indicative of a poor program or lack of control of the safety of its operations.

ATA urges that the provisions of S. 2174 be reconsidered and that the civil penalty for a substantial health or safety violation be eliminated. For motor carriers which have a generally good safety program and safety record and which demonstrate a sincere effort to comply with safety requirements, the civil penalty provisions applicable to recordkeeping violations, together with penalties of placing vehicles and drivers out of service, are adequate and provide the necessary incentives for improved compliance.

If a motor carrier has numerous serious violations that indicate a lack of concern for safety and a poor safety program, the Secretary should take criminal action rather than rely on civil penalties. Otherwise there is no justification for criminal penalty provisions as they will not be used due to the ease of imposing civil penalties.

As an alternative to the foregoing, we urge consideration to setting the standard for civil penalties for substantial health or safety violations the same for employers as employees. There is certainly no justification for setting different criteria for the imposition of the penalty on employers and employees. The penalty should be imposed only if it is found that the employer's action constituted gross negligence or reckless disregard for safety. In concert with that the amount of the employer penalty should be reduced as it is excessive under any circumstances.

SECTION 11: STATE REGULATIONS

National uniformity of regulatory requirements is essential to interstate motor carriers and their employees for a proper understanding of what the requirements are, and how to comply with them at any given time and location throughout the United States.

The requirements of Section 11(a), S. 2174, that laws, rules, regulations, orders and standards shall be nationally uniform are an improvement over the provisions in S. 1108 concerning the relationships between federal requirements and those of state and local jurisdictions.

However, the provision of Section 11(a) which allows the Secretary to grant exceptions to the requirement for national uniformity opens the door for regulatory variations from one jurisdiction to another and is therefore an undesirable feature of the Section, even though the criteria by which such exceptions can be granted are stringent. Such variations create the potential for confusion among motor carriers and their employees about what is required and as a result the opportunity for unintentional violations of regulatory requirements increases.

Regulatory variations also provide an opportunity for accidents, especially when the lack of uniformity exists for operational requirements such as when to use emergency warning flashers on trucks, or when to stop (or not stop) at railroad grade crossings. The truck driver who is operating under a different set of rules than other drivers in a particular locale can easily cause an accident.

We urge reconsideration of Section 11(a), and removal of the provision which allows the Secretary to grant exceptions to the requirement for national uniformity of regulatory requirements.

SECTION 12: INSPECTIONS

In the Congressional Record of November 18, 1983, at page S. 17024, a statement is made that S. 2174 "requires all motor carriers to pass an annual Federal equipment inspection, using State inspectors."

We have carefully read Section 12 and it does not seem to mandate an annual State inspection. We believe that the intent of this Section needs to be clarified.

In previous statements concerning truck inspection requirements ATA has strongly supported the concept of roadside inspection programs rather than annual State inspections. The roadside inspections provide a greater incentive for motor carriers to maintain trucks in safe operating condition throughout the year because there is a possibility of an inspection at any time or place, and the potential exists for drivers and vehicles to be placed out of service, if they are in unsafe condition, at great expense and inconvenience to the motor carrier. Additionally, the roadside inspection program provides an opportunity to check the condition of the load and the driver as well as the condition of the vehicle.

Annual State inspections, on the other hand, are to infrequent, and therefore not appropriate, for high mileage trucks which average 50,000 miles of travel per year and frequently exceed 100,000 miles annually. Most motor carriers have effective maintenance programs and keep their vehicles in safe operating condition at all times. For those who don't, however, the annual inspection provides only a once a year incentive to maintain equipment in safe condition. The annual State inspection is also limited because it determines the condition of only the vehicle, as the inspection is made without a load and without a driver.

ATA again urges that the provisions for truck inspections include a plan for grants to States which will enable them to increase the number and effectiveness of roadside inspection.

The ATA Executive Committee has taken the position that if annual State inspections are required, there must be a provision to allow motor carriers to qualify as self inspection stations. This is essential so that carriers do not have to undergo the burden and costs of sending vehicles to inspection stations. Sending a vehicle for inspection involves a minimum of one hour, and probably two or three hours, of mechanics' time and vehicle time. The cost per vehicle inspected can exceed $50 based on inspection time alone. This amount escalates dramatically for large fleets but there is an unnecessary burden for both small and large fleets resulting from the costs involved as well as the loss of utilization of personnel and equipment that is tied up in the inspection process.

For years a number of States which require motor vehicle inspections annually have conducted a program for certifying motor carrier maintenance facilities for self inspection programs. The annual inspection has been conducted by certified fleets as part of their routine maintenance activity without the major cost burden that would otherwise be incurred.

If the requirement for annual truck inspection by the States is retained, motor carriers should be allowed to qualify for self inspection of their vehicles.

SECTION 14: HEAVY TRUCK RESEARCH

In past comments ATA has emphasized that unsafe driving practices by some truck drivers such as speeding, tailgating, and improper passing are a major cause of truck accidents. We recommended that safety legislation show the concern of Congress for compliance with traffic laws; direct the Secretary to promote compliance with traffic laws; and mandate a study of the extent of non-compliance with traffic laws, the reasons therefore, and how to improve traffic law enforcement and compliance.

We appreciate the action taken to include some of the ATA recommendations in S. 2174 and we urge that further consideration be given to our recommendations for a detailed study of the problems of non-compliance with traffic laws. Section 14 incorporates the ATA recommended provision that the Secretary study the manner in which heavy trucks are driven. However, it does not include the balance of our recommendation that the study: "shall include analysis of human factors of accident causation, focusing on such things as the extent to which there is non-compliance with traffic laws and safety regulations by truck drivers and the reasons therefore. Programs of enforcement agencies should be examined to determine how they can be made more effective in improving truck driver compliance with traffic laws."

Compliance with traffic laws cannot be significantly improved unless there is a detailed study and analysis of the compliance problem. To effectively promote compliance with traffic laws the Secretary must have a full understanding of the extent of non-compliance with traffic laws by truck drivers and the reasons therefore. If the ability of law enforcement agencies to enforce traffic laws is to be improved there must be a study of their current programs, of their resource limitations and of what is needed to make them more effective.

Section 14 shoud be amended to include the ATA recommendation in full.

We wish to recommend further that Section 14 include a requirement that the Secretary be directed to report to Congress the study findings and recommendations for programs to improve traffic law enforcement and truck driver compliance with such laws.

SECTION 15: TRUCK OCCUPANT PROTECTION

ATA does not have an established position on this provision of the safety legislation because it has been newly added.

However, we wish to express the informal view that a study of potential and known hazards to truck occupants should result in a better understanding of the causes and effects of truck accidents, and the severity thereof. The study should provide information about the extent to which occupants can be expected to survive various types of crashes and the extent to which impact forces can be mitigated by improving crash protection for drivers.

SECTION 16: STUDY OF SAFETY-RELATED DEVICES

ATA does not have a formal position on this provision of S. 2174 as the provision has been newly added to the legislation.

A survey of a limited number of motor carrier safety directors elicited the view that the current emergency warning devices carried on trucks are highly effective. The regulation which requires such devices was placed in effect in January, 1974 by the Bureau of Motor Carrier Safety. The devices were thoroughly tested prior to promulgation of the regulation and they meet the high standards of reflectivity set forth in Federal Motor Vehicle Safety Standard 125 of the National Highway Traffic Safety Administration.

ATA estimates that the value of such devices now carried on trucks to comply with the BMCS regulation is well in excess of $30 million.

Given the high performance levels of current devices and the large investment which the industry has in such devices it does not seem likely that there is justification for a requirement to replace the devices, or even for a study of the devices. Our informal opinion is that such a study should be a low priority item. The cost of such a study would be better spent on other matters such as a study of ways to improve measures for control of problem drivers.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. Questions have been raised about the impact of S. 2174 on hazardous materials transportation safety regulation, and specifically the relationship between Section 11, "State Regulations," and the Hazardous Materials Transportation Act (HMTA). It is the Committee's understanding and intent that S. 2174 would not alter the present relationship between motor carrier safety law and that Act or any future amendments thereto—that is, that the HMTA is controlling with respect to the regulation of hazardous materials and specifically the relationship between Federal and state hazardous materials regulations. Committee members would be interested in your comments on the Committee's understanding in this regard.

Answer. It is the ATA understanding that S. 2174 would not alter the present relationship between motor carrier safety law and the Hazardous Materials Transportation Act. The relationship of state and federal regulations as set forth in Section 11 of S. 2174 would pertain to state safety regulations which govern the same matter as that in the current motor carrier safety regulations and regulations established under S. 2174.

It is our understanding that the relationships of state and federal regulations governing the transportation of hazardous materials will continue to be controlled by the provisions of the Hazardous Materials Transportation Act which deal with matters of preemption of state regulations governing hazardous materials transportation by federal requirements.

On the basis of the foregoing ATA has the same understanding on this matter as the Committee.

Question. Certain witnesses have expressed concern about Section 11 of S. 2174 requiring uniformity among motor carrier safety laws. In this regard, the National Association of Regulatory Utility Commissioners (NARUC) proposed that intrastate transportation affecting interstate commerce be removed from coverage under S. 2174. What is your view of this proposal? How much of the total truck transportation would be affected by this proposal?

Answer. The regulation of truck safety cannot be cut off at state lines. It is imperative that the same regulatory requirements apply to both intrastate and interstate truck operations. Otherwise certain states with lower levels of safety requirements might become dumping grounds for drivers and vehicles that cannot meet more stringent requirements in other states and in interstate commerce. The end result would be that such drivers and vehicles would jeopardize the safety of the public, and of interstate truck operations as well as their own safety. Safety requirements that apply only to intrastate truck operations could seriously affect the efforts for uniformity that assure a clear understanding from one state to another of which is required of vehicles of certain types, such as stopping at railroad crossings, using warning devices in event of a breakdown, requirements for lights, reflectors and markers on vehicles. If there is not uniformity of these matters among both interstate and intrastate vehicles there will be confusion among the public and truck drivers about why there are differences and what they mean.

ATA estimates that well over 50% of the trucks are engaged in intrastate commerce and would be affected by the NARUC proposal that intrastate transportation affecting interstate commerce be removed from coverage under S. 2174.

Question. You have expressed concern over the inspection provision in Section 12 of S. 2174 and have instead recommended a system of roadside inspections. It is not the Committee's intent for this section to preclude such inspections but instead to ensure that at least an annual inspection is conducted on every motor vehicle. Would such additional roadside inspections and other programs not be possible under Section 12 as drafted? If the Committee's intent in this regard is not clear or implemented in the provision as drafted, what would you recommend for clarification?

Answer. We are saying that any additional costs and burdens resulting from inspection requirements would best be related to roadside inspection programs because they are of much greater effectiveness than annual State inspections. We do not oppose requirements that a motor carrier conduct periodic maintenance and inspection of its own vehicles at least on an annual basis, or have such inspections conducted for it. We believe that Section 12 is generally clear in that additional roadside inspections and other programs would be possible under Section 12 as drafted. We are not clear as to whether or not an annual State inspection is required. If so, we are opposed to such a requirement, except if there is a provision for self inspection for motor carriers which have their own maintenance facilities.

Question. Section 30 of the Motor Carrier Act of 1980 granted the Department of Transportation certain discretion in applying minimum financial responsibility requirements to certain intrastate non-bulk hazardous materials. Certain parties have proposed a legislative amendment which would expand this authority to cover certain interstate non-bulk hazardous materials, arguing that many such movements, while interstate, are local in nature and should not be unduly burdened, as was intended under the Act. Committee members would appreciate your view on this proposed amendment.

Answer. If an accident occurs in intra or interstate commerce the results can be very serious, expecially if it occurs on a high speed beltway similar to those in many local jurisdictions. There is no reason to believe that lower levels of financial responsibility are appropriate for interstate non-bulk hazardous materials whether they are engaged in local or long distance transportation. The only exception, might be to reduce the requirements as they apply to non-bulk hazardous materials transportation in small quantity—quantities that do not require placarding of the vehicle. For such transportation the lower levels of financial responsibility applicable to interstate transportation of nonhazardous materials should apply.

Question. NARUC has recommended the creation of a National Motor Carrier Safety Advisory Committee to advise and recommend on motor carrier safety regulation. What are your views on this proposal?

Answer. NARUC has not yet sent us details of its recommendations for creation of a National Motor Carrier Safety Advisory Committee to advise and recommend on motor carrier safety regulation and so we cannot comment specifically on the proposal. However, it would seem that such a Committee would be duplicative of the National Motor Carrier Advisory Committee appointed by the Secretary of Transportation. That Committee deals with numerous matters that relate to regulation of the safety of motor carriers. Such duplication appears to be unnecessary.

When ATA learns more about the NARUC proposal we will provide additional comments.

Senator DANFORTH. Thank you, Mr. Johns.

Mr. Henderson.

Mr. HENDERSON. Thank you, Mr. Chairman.

My name is Richard D. Henderson. I am executive vice president of the Private Truck Council. With me this morning is John DeVierno of the law firm of Billig, Sher & Jones, our general counsel.

We appear today to commend you and your cosponsors for your work on S. 2174. Overall, it is a good bill. We just want to take this opportunity to reaffirm some key points we have made earlier, both in testimony before this committee and in meetings with your staff.

On the matter of State regulation, section 11, which requires uniformity of these regulations, we strongly support this provision. We consider it evident from the Department of Transportation section 19 study and our members' experience that the lack of uniformity in State laws and regulations affecting the trucking industry is the greatest single impediment to safe, economic, and efficient operation of trucks in the interest of a productive national economy.

The strengthening of the preemptive features of section 11 compared to its predecessor in S. 1108 as introduced is in our view the best and most important change the committee has made. Indeed, without these improvements I cannot say that our membership would support the bill.

Mr. Chairman, on this point I want to depart from my prepared statement and comment on the statement made earlier this morning by Secretary Burnley, who expressed concern that under section 11 DOT could possibly be on the receiving end of numerous petitions for exemptions. I have some thoughts on this.

First, I am not so sure that this would be the case. We do not believe that the States and localities would lightly file petitions. DOT's treatment of the first few petitions would most likely set precedents which would likely focus the nature of other petitions. A practice would develop whereby certain types of petitions are generally denied and others accepted.

But most importantly, if his fears of a rash of petitions come true, I think this illustrates the problem that we face and demonstrates the need for uniformity. We are faced with compliance as trucking operators with numerous laws. At present, variance in State inspection laws has been, is a burden. Other areas can possibly become burdensome. But we carry on, Mr. Chairman, even though it is a burden for us to learn about and comply with all of these rules.

If Mr. Burnley receives as many petitions as he fears, then maybe he will finally begin to understand the problem. So while this kind of fear of numerous petitions on his part is exaggerated, if it is true it really confirms the need. And I agree with you that there could be chaos if the burden of proof were to be reversed and were not in the first instance resting with the State.

On the matter of inspection, as we indicated to the committee last July, the single most important way to further deter truck accidents caused by equipment deficiencies would be to improve vehicle inspection programs. With regard to inspections, we would like to suggest that section 12 be amended to require by statute that the DOT rulemaking on this matter consider the feasibility of adopting the Commercial Vehicle Safety Alliance program nationwide. We commend the committee for having made this suggestion in its report on title III of S. 1108, but, as the committee clearly agrees with us on the importance of DOT considering this system as an alternative, we see no reason why the suggestion should not be elevated to statute.

And again, uniformity is crucial here. With inspection, perhaps more than in any other area, the potential exists for different State laws and requirements and the duplicate fees and stickers which place such a heavy burden on truck operators.

Finally, on penalties, we recognize this committee's desire to establish an effective system of deterrence to unsafe practices and that penalties do play a role. We continue to believe that a criminal penalty system such as the one in place at present is adequate, and we do not support civil penalties in nonhazardous materials cases. We recognize the committee has considered our position previously and rejected it. Thus, at this time we would like to still suggest that consideration be given to reducing the civil penalties as set in this bill.

Also with respect to the penalties, should the committee retain in this bill the high levels already set for gross negligent acts, we would recommend the committee clarify that gross negligence includes drunk driving or driving while under the influence of drugs. This would not be a new prohibition, just a clarification. And we do support, as mentioned earlier, the agreement that the parties had indicated to your staff.

Finally, on the National Driver Register, if there is any possibility of accelerating the timetable——

Senator **Danforth**. I am sorry, what was that, Mr. Henderson? The agreement?

Mr. **Henderson**. The change that was spoken to by Secretary Burnley. We would support the position taken by Mr. Durham and I think the other parties in that agreement.

Senator **Danforth**. You mean on the civil penalties and whether or not to expand——

Mr. **Henderson**. Right.

Senator **Danforth**. You disagree with DOT on that?

Mr. **Henderson**. Yes, we do.

Finally, on the National Driver Register, if there is any chance of accelerating the timetable for that we would support it.

Thank you.

[The statement follows:]

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. Chairman and Members of the Subcommittee, my name is Richard D. Henderson and I am Executive Vice President of the Private Truck Council of America (PTCA). With me this morning is John A. DeVierno of the law firm of Billig, Sher & Jones, P.C.

PTCA is the only independent national organization representing non-transportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing, or other businesses. Private trucking is acknowledged to be the largest segment of the trucking industry, and the PTCA's approximately 1,800 member companies include Fortune 500 companies and numerous smaller concerns.

We are pleased to appear before this Committee again on the subject of truck safety and commend the members of this Committee, and certainly you, Mr. Chairman, for showing such strong interest in this area.

I think you know of our activities in and strong commitment to safety from our previous appearances before this Committee; I will not describe our safety programs again at this hearing.

We appear today to commend you and your co-sponsors for your work on S. 2174. Overall it is a good bill. We just want to take this opportunity to reaffirm the key points we have made earlier both in testimony on the bill's predecessor, S. 1108 (Title III), and in meeting with your Committee staff.

STATE REGULATIONS

We strongly support Section 11, which requires uniformity of state safety regulations. We consider it evident from the Department of Transportation's Section 19 Study, and our members' experience, that the lack of uniformity in state laws and regulations affecting the trucking industry is the greatest single impediment to safe, economic, and efficient operation of trucks in the interest of a productive national economy.

The strengthening of the preemptive features of Section 11, compared to its predecessor in Title III of S. 1108, as introduced, is, in our view, the finest and most important change that the Committee has made since S. 1108 was introduced. Indeed, without these improvements, I cannot say that our membership would support the bill.

INSPECTION

As we indicated to this Committee last July, the single most important way to further deter truck accidents caused by equipment deficiencies would be to improve vehicle inspection programs.

With regard to inspections, we would like to suggest that Section 12 be amended to require, by statute, that the DOT rulemaking on this matter consider the feasibility of adopting the Commercial Vehicle Safety Alliance (CVSA) program nationwide. We commend the Committee for having made this suggestion in its report on Title III of S. 1108 but, as the Committee clearly agrees with us on the importance of DOT considering the CVSA system as an alternative to its present practices, we see no reason why this suggestion should not be elevated to the statute. Nine western and central states have now adopted the CVSA. We suggest this approach not only as to its particular equipment requirements, but also because it involves reciprocity among the participating states as to those standards. This would ensure uniformity. And uniformity is crucial here; with inspection, perhaps more than in any other area, the potential exists for differing state laws and requirements and the duplicate fees and stickers which place such a heavy burden on truck operators.

PENALTIES

We recognize this Committee's desire to establish an effective system of deterrence to unsafe practices and that penalties do play a role (though not as important a role as a good inspection program). We continue to believe that a criminal penalty system such as the one in place at present is adequate and do not support civil penalties in non-hazardous materials cases. We recognize that the Committee has considered our position previously and rejected it. Thus, at this time, we do suggest that consideration be given to reducing the civil penalty levels in the bill.

Also with respect to penalties, should the Committee retain in the bill specific and high civil penalties for grossly negligent acts, we recommend that this Committee clarify that gross negligence includes drunk driving or driving while under the influence of drugs. We know of both your commitment to eliminating drunk driving as well as that of Secretary of Transportation Dole. We just point out that, unfortunately, it can be a problem with a very small minority of truck drivers. Our suggested change may assist management's role in dealing with this most difficult problem and thereby protect the public. We see no need for the public to have to wait for litigation to clarify whether gross negligence, as used in S. 2174, includes drunk or drugged driving.

NATIONAL DRIVER REGISTER

Lastly, we urge acceleration of the timetable for full implementation of the National Driver Register. This project, in our view, is the single most effective means of getting the unsafe truck driver off the highways; past driving records usually tell the story and any prospective employer of a driver should have access to this information. Any bill seeking to directly and effectively deal with truck safety problems should include a provision which accelerates full implementation of the NDR.

That concludes our prepared statement Mr. Chairman. At this time we would be pleased to respond to any questions you or other members of the Subcommittee may have.

Senator DANFORTH. Thank you, sir.

Mr. Siegel.

Mr. SIEGEL. Thank you, Mr. Chairman. We appreciate the opportunity to be here on behalf of our 5,100 members across the United States.

ITOO stands foursquare behind the purposes set forth in section 2 of the Motor Carrier Safety Act of 1983. We firmly believe that the enforcement of safety functions on a uniform basis nationwide should be done.

We are also in favor of giving DOT broader authority to promulgate and enforce safety and health regulations governing motor carrier operations in interstate commerce, and we are also in favor of the Interstate Commerce Commission carefully considering the safety fitness of each carrier applicant for new authority to operate as a motor carrier.

The ICC's performance to date has been dismal in the extreme. Not only should the safety record of an applicant be considered, but also the ability of an applicant to conform to existing regulations should be a matter of direct concern.

All too often, the ICC has granted new authority to carriers that are unfit to obtain such authority. In fact, even the DOT is suing the Interstate Commerce Commission in the U.S. Court of Appeals for the District of Columbia Circuit regarding lax fitness procedures and attitude.

To have this situation occurring is an absolute fiasco and is a monument to the refusal of the Interstate Commerce Commission to enforce the law as it is written. This legislation should give direct instruction to the ICC to consider safety fitness very carefully.

Safety fitness also involves financial fitness of the carrier. It is our grave concern that too many undercapitalized truckers on the road are causing safety fitness problems. Even in the Washington, D.C., area, the American Automobile Association has raised serious questions concerning motor carrier safety, as evidenced by numerous accidents on the circumferential highway around the District of Columbia. Lack of an ICC safety fitness screening and enforcement policy which has contributed to this situation is a disgrace and quite possibly could rise to the level of an impeachable offense if seriously investigated.

We are in favor of updating the civil and criminal penalties for use by DOT in enforcing safety regulations, and we also feel that they should be updated for use by the ICC in connection with regulated carriers. It is my understanding that there is some question regarding the jurisdiction of DOT to assess penalties against private carrier operators. Safety should be a paramount concern in both for-hire operations and private carrier operations.

ITOO believe that equal and fair standards should be set for both employers and employees in terms of penalties for violations of safety regulations. Therefore, ITOO is in favor of reducing the maximum penalty for any single offense to not more than $2,500. This would assure equality of treatment to employers and employees and would likely keep a heavyhanded administrator looking for trucking violations from putting a trucking company out of business.

Earlier, I mentioned the need to legislate safety fitness standards to be used by the ICC. Something simply must be done to force the ICC to perform its statutory duties. If any Commissioner does not believe in enforcing the law administrated by his or her agency, then that person should immediately resign.

At the present time, it appears that the only way a private carrier can be put out of business for repetitive safety violations is after a long and protracted injunction proceeding in a Federal district court, if then. Whatever standards are to be made applicable to for-hire carriers should also be made applicable to private carriers, so that grossly unsafe private carriers may be shut down.

Periodic safety inspection of motor carrier equipment, if this means annual or semiannual inspections by State officials, is not supported. Presently, carriers are required under DOT regulations to maintain their equipment to certain standards and to keep paperwork to confirm that such regulations are followed. In a situation where a truck may travel as much as 175,000 or more miles per year, an inspection would be out of date within a week or two after it was made.

Frankly, we fear that such an inspection requirement would merely amount to further harassment of the owner-operator. We are definitely not in favor of that. Spot roadside checks, in the context of actual operations transporting cargo, certainly make much more sense. These inspections are currently being made by DOT personnel as well as State officials.

There are a few technical provisions of the bill which I wish to address, which I feel need further attention.

First, it should be clear that a U.S. Attorney handling a safety prosecution should be able, after commencing the case, to settle it. Section 9(b), amending 49 United States Code 521(b), does not clearly set forth this discretion. Also, there should be some flexibility given to the Secretary to allow payment of a fine over a period of time.

The time for filing of an appeal to court under the Hobbs Act, which governs appeals from administrative agency proceedings, is 60 days. Why is the appeal period shortened to 30 days in S. 2174?

Also, review of the Secretary's order should also be had under the arbitrary and capricious standard. Certainly if the action of the Secretary is arbitrary and capricious, even though it may be supported by substantial evidence, it should not be allowed to stand.

Another technical matter relates to the authority of the Secretary to grant a stay of the DOT enforcement action pending determination of a court appeal. Based upon the futility of seeking a stay at the ICC pending judicial review, it is possible that this discretionary power was intentionally eliminated in the bill. However, there should be discretion vested in the Secretary to stay an order, even though it should not be mandatory for a party to apply for such a stay before seeking a stay from the appropriate court.

We applaud the intent of section 13 of the bill, but believe that it should be made clear that safety fitness also includes consideration of the financial fitness of a carrier applicant for new authority. Currently, the Interstate Commerce Commission does not consider the financial fitness of an applicant, instead allowing the marketplace to be the final arbiter of financial ability.

This is a senseless and irrational approach, because safety costs money and a carrier must have adequate resources or safety will suffer. The cost of compliance with safety regulations is not a small one, and a carrier operating on a shoestring budget will simply cut corners at every opportunity.

The only reason why the true impact of deregulation on safety has not been felt is that statistical data has been and is being deliberately suppressed because of what it will show.

[The statement follows:]

STATEMENT OF MARSHALL SIEGEL, EXECUTIVE DIRECTOR, INDEPENDENT TRUCK OWNER-OPERATORS ASSOCIATION

Mr. Chairman and members of the Committee, my name is Marshall Siegel, Canton, Mass. I want you all to know that I appreciate the opportunity to appear and testify on this matter of paramount interest to our membership. The Independent Truck Owner-Operators Association, called ITOO for short, is a group of over 5,100 owner-operators, merchant vendors who sell to owner-operators, finance companies who finance owner-operators, and trucking companies that employ owner-operators. I am its executive director. It is an organization of, by and for the owner-operator. Other classes of members of the association may join only after they are investigated and approved as being persons who have a record of dealing fairly with owner-operators.

ITOO has members in every state of the union, and our membership is growing rapidly. The organization is about three years old. We represent a responsible alternative for the owner-operator, unlike those organizations that caused or supported the trucking strike last year. We thought it unwise at the time, and actively opposed it. ITOO works for the good of the owner-operator, and assists him or her in getting into business and staying in business through furnishing of operational information, general business advice, and as an information disseminator. I can assure that we intend to make certain that our membership and their friends are fully aware of what the administration and this committee have done and are doing to and for our members and others in the trucking industry.

ITOO stands foursquare behind the purposes set forth in Section 2 of the Motor Carrier Safety Act of 1983. We firmly believe that enforcement of safety functions on a uniform basis nationwide should be done.

ITOO is in favor of giving the Department of Transportation (DOT) broad authority to promulgate and enforce safety and health regulations governing motor carrier operations in interstate commerce, but also is in favor of the Interstate Commerce

Commission (ICC) carefully considering the safety fitness of each carrier applicant for new authority to operate as a motor carrier. The ICC's performance, to date, has been dismal in the extreme. Not only should the safety record of an applicant be considered, but also the ability of an applicant to conform to existing regulations should be a matter of direct concern. All too often, the ICC has granted new authority to carriers that are unfit to obtain such authority. In fact, even the Department of Transportation is suing the Interstate Commerce Commission in the United States Court Appeals for the District of Columbia Circuit regarding lax fitness procedure and attitude, in *Department of Transportation* v. *Interstate Commerce Commission*, D.C. Cir. No. 83-1436. To have this situation occur is an absolute fiasco, and is a monument to the refusal of the Interstate Commerce Commission to enforce the law as it is written. This legislation should give direct instructions to the ICC to consider safety fitness carefully.

Safety fitness also involves financial fitness of a carrier. It is our grave concern that too many undercapitalized truckers on the roads are causing safety fitness problems. Even in the Washington, D.C. area, the American Automobile Association has raised serious questions concerning motor carrier safety as evidenced by numerous accidents on the circumferential highway around Washington, D.C. Lack of an ICC safety fitness screening and enforcement policy which has contributed to this situation is a disgrace, and quite possibly could rise to the level of an impeachable offense if seriously investigated.

ITOO is in favor of updating the civil and criminal penalties for use by DOT in enforcing safety regulations, but also feels that they should be updated for use by the ICC in connection with regulated carriers. It is my understanding that there is some question regarding the jurisdiction of DOT to assess penalties against private carrier operators. Safety should be a paramount concern in both for-hire operations and private carrier operations.

ITOO believes that equal and fair standards should be set for both employers and employees, in terms of penalties for violations of safety regulations. Therefore, ITOO is in favor of reducing the maximum penalty for any single offense to not more than $2,500.00. This would assure equality of treatment to employers and employees, and would likely keep a heavy handed administrator looking for technical violations from putting a trucking company out of business.

Earlier, I mentioned the need to legislate safety fitness standards to be used by the ICC. Something simply must be done to force the ICC to perform its statutory duties. If any commissioner does not believe in enforcing the law administrated by his or her agency, then that person should immediately resign; failure to do so is a direct reflection upon the integrity of the individual involved.

At the present time, it appears that the only way a private carrier can be put out of business for repetitive safety violations is after a long and protracted injunction proceeding in a federal district court, if then. Whatever standards are to be made applicable to for-hire carriers should also be made applicable to private carriers, so that grossly unsafe private carriers may be shut down.

ITOO agrees that DOT should study the safety characteristics of heavy trucks, as well as the unique problems related to them; therefore, I support the provisions in the Bill relating to the proposed study.

Periodic safety inspection of motor carrier equipment, if this means annual or semi-annual inspections by state officials, is not supported. Presently, carriers are requested under DOT regulations to maintain their equipment to certain standards, and to keep paperwork to confirm that such regulations are followed. In a situation where a truck may travel as much as 175,000 or more miles per year, an inspection would be out of date within a week or two after it was made. Frankly, we fear that such an inspection requirement would merely amount to further harassment of the owner-operator. We are definitely not in favor of this. Spot roadside checks, in the context of actual operations transporting cargo, certainly makes more sense. These inspections are currently being made by DOT personnel as well as state officials.

There are few technical provisions of the Bill that I wish to address, which I feel need further attention.

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The time for filing of an appeal to court under the Hobbs Act, which governs appeals from administrative agency proceedings, is 60 days. Why is the appeal period shortened to 30 days in S. 2174 (see page 15)? Also, review of the Secretary's order should also be had under the "arbitrary and capricious" standard. Certainly if the action of the Secretary is arbitrary and capricious, even though it may be supported by substantial evidence, it should not be allowed to stand.

Another technical matter relates to the authority of the Secretary to grant a stay of the DOT enforcement action pending determination of a court appeal. Based upon the futility of seeking a stay at the ICC pending judicial review, it is possible that this discretionary power was intentionally eliminated in the Bill. However, there should be discretion vested in the Secretary to stay an order, even though it should not be mandatory for a party to apply for such a stay before seeking a stay from the appropriate court.

ITOO applauds the intent of Section 13 of the Bill, but believes that it should be made clear that safety fitness also includes consideration of the financial fitness of a carrier applicant for new authority. Currently, the ICC does not consider the financial fitness of an applicant, instead allowing the "market place" to be the final arbiter of financial ability. This is a senseless and irrational approach, because safety costs money, and a carrier must have adequate resources or safety will suffer. The cost of compliance with safety regulations is not a small one, and a carrier operating on a shoe string budget will simply cut corners at every opportunity. The only reason why the true impact of deregulation on safety has not been felt is that statistical data has been and is being deliberately suppressed because of what it will show. Indeed, the ICC is currently considering eliminating all financial reporting requirements for ICC regulated carriers. It earlier eliminated reporting requirements for smaller carriers which it regulates. Operating in a state of ignorance, the ICC cannot possibly achieve responsible regulation. Even the insurance industry has condemned the ICC for eliminating such requirements, and it is respectfully submitted that financial and safety information should be collected by the ICC in order to allow proper monitoring and enforcement.

I again want to compliment this Committee on the fine job it has done earlier as well as with S. 2174 concerning motor carrier safety. This is clearly an area where regulation is needed, monitoring is needed, and we fail to concern ourselves with it at the very peril of our lives. An owner-operator is on the road proportionally much more than other drivers, and no more wants to meet or drive an unsafe truck than any other driver or passenger.

Senator DANFORTH. Thank you, Mr. Siegel.

Gentlemen, I think that there is general agreement among you on three points. Let me make sure. With respect to uniformity, it is my understanding, and Mr. Henderson certainly made it clear, that uniformity is very important as far as you are concerned, is that correct?

Mr. JOHNS. Mr. Chairman, that would be correct. We feel that the current provision in S. 2174 has been improved greatly over the provision in S. 1108. However, it is the feeling of our executive committee that there should be total uniformity, total national uniformity for interstate truck operations to avoid confusion among truck operators and truckdrivers as to what the requirements are.

Senator DANFORTH. And Mr. Siegel?

Mr. SIEGEL. We believe in uniformity also.

Senator DANFORTH. You disagree with Mr. Greer? He was the man from West Virginia.

Mr. SIEGEL. That is correct.

Senator DANFORTH. And with respect to civil penalties, is your position the same as Mr. Henderson's, that is, that the provisions on civil penalties should not be broadened as recommended by the Department of Transportation?

Mr. JOHNS. Very definitely. We feel that the middle level of civil penalty for lesser violations would provide a tremendous imposition, unfair imposition, on the motor carrier. For example, there are something like 32 lights on a truck, and if one of those little marker lights burned out the carrier would be subject to civil penalty, and we do not think safety would be jeopardized. We do not think such a civil penalty is justified.

Senator **Danforth**. So that the bill in its present form would be preferable to the suggestion made by Mr. Burnley?

Mr. **Johns**. Yes; and yet we agree with the statement made that the amount of the civil penalty should be eliminated for the substantial violations, should be eliminated or we believe it should be reduced. And the same criteria for imposition of those penalties as given to employees, that is, gross negligence or reckless disregard for safety, should be the criteria for imposing the civil penalty on the employer.

Senator **Danforth**. Mr. Siegel.

Mr. **Siegel**. Well, we feel that a cap at $2,500 on a civil penalty. Otherwise, as it is now we are instant taxpayers in every State, and if we start paying more fines there goes safety. It is going to be sacrificed.

Senator **Danforth**. OK. Now, safety fitness. The effort of the bill is to improve on the present situation. Do you think that the bill goes far enough?

Mr. **Siegel**. It is going to have to go a little farther, Senator, because we have to get the Interstate Commerce Commission to also realize that involvement in safety is financial responsibility. And a lot of people starting up, a lot of motor carriers getting into the industry today, do not have the backup money so when something goes wrong they can afford preventive maintenance on the truck.

Senator **Danforth**. Mr. Taylor suggests that the language in the bill be clarified to make it clear that safety fitness should be an overriding consideration. Do you agree with that?

Mr. **Siegel**. No. It should be financial fitness also.

Senator **Danforth**. I understand your view of financial fitness, but just concentrating on safety fitness for the moment.

Mr. **Siegel**. Safety is a very important factor to us as the independent owner-operators, and we do not want to be in an unsafe truck. We do not want to be on the road with——

Mr. **Johns**. Yes; we certainly agree with the statement by Chairman Taylor.

Senator **Danforth**. Mr. Henderson.

Mr. **Henderson**. Yes; we would agree, safety has to be top.

Senator **Danforth**. Gentlemen, thank you very much.

Mr. Robert Forman, representing the American Bus Association, and Mr. Paul Nagle, United Bus Owners of America. Mr. Forman.

STATEMENTS OF ROBERT J. FORMAN, VICE PRESIDENT, SAFETY AND SECURITY, TRAILWAYS, INC., REPRESENTING THE AMERICAN BUS ASSOCIATION, ACCOMPANIED BY JACK BURKERT, DIRECTOR, SAFETY AND REGULATORY COMPLIANCE; AND PAUL NAGLE, ASSISTANT TO THE EXECUTIVE DIRECTOR, UNITED BUS OWNERS OF AMERICA

Mr. **Forman**. Good morning, Senator.

Before I begin I would like to introduce the gentleman on my left, a recent addition to the American Bus Association staff, Jack Burkert. He will have the responsibility as director of safety and regulatory compliance for furthering the association's already active safety committee functions, and I wanted the committee and you to be aware of this recent change and upgrading of the safety function in our association.

My name is Robert J. Forman. I am vice president of safety and security for Trailways Lines, Inc., out of Dallas, Tex. And I am testifying here today on behalf of the American Bus Association. I have been a longtime member and past chairman of the association's safety committee. The members of the committee are listed in an appendix following the prepared statement.

The American Bus Association is a national trade association for the intercity bus industry. The association has approximately 3,000 members, including bus operators providing regular route service, charter and tour operations, special operations, travel and tourism members who are dependent upon buses to bring them business, theme parks, hotels, restaurants, cities, States, and other destinations, and associated members who are manufacturers or suppliers to our industry.

The association has approximately 800 operator members, who are dedicated to maintaining and improving bus safety. This dedication is reflected in the superb safety record of our industry. For the years 1978 through 1981, the fatality rate per 100 million bus passenger miles was 0.01, 0.02, 0.13, 0.01 respectively. Over the years, travel by bus has been more than 20 times safer than travel by automobile. However, we are acutely aware of the dangers of complacency.

Over 1,000 new carriers, most without previous intercity operational experience, have entered the market under the liberal entry provisions of the Bus Regulatory Reform Act of 1982. The lowering of entry barriers for both bus and truck operators demands intensification of legislation, regulatory and managerial efforts to improve commercial vehicle safety.

We commend you, Senator Danforth, and your cosponsors of S. 2174 for dealing comprehensively with the critical issues of motor vehicle safety. The America Bus Association favors the objectives of the bill and is in general accord with the specific provisions. The ABA safety committee has studied the bill and offers the following suggestions for clarifications and improvements:

Under section 4, expansion of Federal safety jurisdiction, perhaps the most significant feature of the bill is proposed expansion of this jurisdiction. Some expansion would result from Federal insertion of the safety jurisdiction upon the private bus transportation.

A greater expansion of the Federal safety jurisdiction would be achieved by defining "commerce" in section 4 of the bill to mean "transportation which affects interstate commerce." This language makes Federal jurisdiction over commercial vehicle safety as broad as that which exists over labor-management relations, maximum hours of service, and minimum wages. As a result, most interstate operations, including those of local transit authorities, would be made subject to the Federal safety regulations for the first time.

The ABA favors the proposed enlargement of the Federal safety jurisdiction if, as the bill contemplates, safety laws and regulations are made nationally uniform.

We also favor the exemption of buses used in the transportation of students to and from school and school-sponsored events. School transportation is essentially local in nature and is closely regulated by the States.

Mandatory inspection or investigation of complaints under section 8 is a small concern to us. Section 8 of the bill would require the Secretary to investigate all nonfrivolous written complaints alleging material safety violation and to notify the complainant of the findings of his investigation. Certainly, the Secretary should and currently does investigate complaints of serious violations. However, we do not believe that the Secretary can investigate all written complaints with the limited field staff available and file a report thereon without slighting more important safety responsibilities.

ABA has no objection to increasing penalties for safety violations or to making most safety violations subject to both criminal and civil penalties. We would like to emphasize, however, that the basic problem today is not inadequate penalties, but inadequate enforcement. Expanding the range of civil penalties and making penalties more severe will not enhance motor vehicle safety unless the number of safety agents and inspectors is increased to identify and take action against those carriers who do not or will not comply with the safety regulations.

Proposed subsection (b) of 49 U.S.C. 507 would authorize district courts to grant injunctive relief, equitable relief, and punitive damages. We do not believe that punitive damages should be encouraged by specific authorization. We recommend that the language of the original bill, S. 1108, "such further relief as justice and public safety may require," be substituted for the punitive damage language.

[The statement follows:]

STATEMENT OF ROBERT J. FORMAN, COMMITTEE ON SAFETY, AMERICAN BUS ASSOCIATION

Mr. Chairman and Members of the Committee, my name is Robert J. Forman. I am Vice President-Safety and Security of Trailways Lines, Inc., of Dallas, Texas, but I testify here today on behalf of the American Bus Association. I am a long-time member and past Chairman of the Association's Safety Committee. Members of the Committee are listed in the Appendix to my prepared statement.

With me today is Jack Burkert, ABA's new Director of Safety and Regulatory Compliance. Burkert's appointment as a full-time safety person at ABA underscores the intercity bus industry's commitment to safety in the new environment of deregulation.

The American Bus Association is the national trade association for the intercity bus industry. The Association has approximately 3,000 members, including bus operators providing regular-route service, charter and tour operators, and special operators; travel and tourism members who are dependent upon buses to bring them business—theme parks, hotels and restaurants, cities and States and other destinations—and associate members who are manufacturers or suppliers to the bus industry.

The Association has approximately 800 operator members who are dedicated to maintaining and improving bus safety. This dedication is reflected in the superb safety record of our industry.

For the years 1978 through 1981, the passenger fatality rate per 100 million bus passengers miles was 0.01, 0.02, 0.13, and 0.01, respectively.[1] Over the years, travel by bus has been more than 20 times safer than travel by automobile. However, we are acutely aware of the dangers of complacency. Over 1,000 new carriers, most of them without previous intercity operational experience, have entered the market under the liberal entry provisions of the Bus Regulatory Reform Act of 1982. The lowering of entry barriers for both bus and truck operators demands an intensification of legislative, regulatory, and managerial efforts to improve commercial motor vehicle safety.

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[1] Bus Facts, American Bus Association (1982 ed.) page 9. Source: Figures derived by ABA from ICC and Bureau of Motor Carrier Safety data.

We commend Senator Danforth and the co-sponsors of S. 2174 for dealing comprehensively with the critical issues of motor vehicle safety. The American Bus Association favors the objectives of the bill and is in general accord with its specific provisions. The ABA Safety Committee has studied the bill and offers the following suggestions for clarifications and improvement.

EXPANSION OF FEDERAL SAFETY JURISDICTION (SECTION 4)

Perhaps the most significant feature of the bill is the proposed expansion of Federal safety jurisdiction. Some expansions would result from Federal assertion of safety jurisdiction over private bus transportation.

A much greater expansion of Federal safety jurisdiction would be achieved by defining "commerce" in Section 4 of the bill to mean transportation which "affects" interstate commerce. This language makes Federal jurisdiction over commercial motor vehicle safety as broad as that which exists over labor-management relations for maximum hours of service and minimum wages. As a result, most intrastate bus operations, including those of local transit authorities, would be made subject to Federal safety regulation for the first time.

ABA favors the proposed enlargement of Federal safety jurisdiction if, as the bill contemplates, safety laws and regulations are made nationally uniform.

We also favor the exemption for buses used in transporting students to or from school or school-sponsored events. School bus transportation is essentially local in nature and is closely regulated by the States.

MANDATORY INVESTIGATION OF COMPLAINTS (SECTION 8)

Section 8 of the bill would require the Secretary to investigate all nonfrivolous written complaints alleging a material safety violation and to notify the complainant of the findings of such an investigation. Certainly the Secretary should, and currently does, investigate complaints of serious violations. However, we do not believe the Secretary can investigate all written complaints with the limited field staff available and file a report thereon without slighting more important safety responsibilities.

PENALTIES (SECTION 9)

ABA has no objection to increasing penalties for safety violations or to making most safety violations subject to both civil and criminal penalties. We would like to emphasize, however, that the basic problem today is not inadequate penalties but inadequate enforcement. Expanding the range of civil penalties and making penalties more severe will not enhance motor vehicle safety unless the number of safety agents and inspectors is increased to identify and take action against those carriers who do not or will not comply with the safety regulations.

Proposed subsection (b) of 49 U.S.C. 507 would authorize district courts to grant injunctive relief, equitable relief, and "punitive damages." We do not believe punitive damages should be encouraged by specific authorization. We recommend that the language of the original bill (S. 1108)—"such further relief as justice and public safety may require"—be substituted for "punitive damages."

The proviso to paragraph (2) of 49 U.S.C. 521(b) on pages 12 and 13 of the bill authorizes civil penalties to be assessed against employees which, as a practical matter, cannot be enforced. It is almost impossible to prove that an employee's actions "constituted gross negligence or reckless disregard for safety." ABA does not object to relatively low civil penalties for employees but believes they should be assessed and collected under the same standards and procedures applicable to employers.

Proposed paragraph (7) of 49 U.S.C. 521(b) on page 15 of the bill would require the Secretary to establish civil penalty schedules designed to induce timely compliance. What is contemplated, apparently, is that certain types of violations would carry a predetermined fine which could be assessed on the spot by checking a fine schedule. We view the proposal as an undesirable limitation on the Secretary's discretion. Also, the provision tends to prevent assessment of civil penalties in the light of a carrier's overall safety record. Panalties for non-serious violations only create additional administrative burdens for both the carriers and the government with little or no net safety benefit.

STATE REGULATIONS (SECTION 11)

ABA favors the preemption of State safety authority in the interest of achieving national uniformity as provided in Section 11(a) of the bill. Such preemption is necessary in view of the expansion of Federal safety jurisdiction to include traffic or transportation which "affects" interstate commerce. Carriers would be placed in an intolerable position if they were required to comply with differing safety rules and regulations which currently exist.

VEHICLE INSPECTIONS (SECTION 12)

A well-conceived Federal-State program of commercial motor vehicle safety inspection can pay dividends in terms of accident reduction. Such an inspection program is especially important when thousands of relatively inexperienced bus operators are entering the field. My observations on vehicle inspection relate solely to buses. The Committee may conclude that truck inspection should be treated differently.

We recommend that Section 12 of the bill be amended by providing for "periodic inspections" rather than for inspections "no less often than annually." It is not uncommon for buses to be operated in excess of 100,000 miles a year. An annual bus inspection requirement would be meaningless in view of this level of usage.

Paragraph (b) should also authorize the Secretary to establish Federal standards for the self-inspection of buses and to require complete state reciprocity for periodic inspections conducted under Federal standards.

Bus inspection under Federal standards, coupled with mandatory reciprocity, would not be inconsistent with programs for random commercial motor vehicle inspection.

The Commercial Vehicle Safety Alliance, a consortium of 13 states and two Canadian provinces,[2] has established a program of random inspection of vehicles both on the road and in terminals using a common set of inspection standards. Reciprocity is extended on the basis of a CVSA decal. The ABA has endorsed the objectives and programs of the Commercial Vehicle Safety Alliance. We would not want to see the work of the Alliance inhibited or downgraded by inflexible Federal requirements for commercial motor vehicle inspection.

CONCLUSION

The American Bus Associaton favors the enactiment of the proposed Motor Carrier Safety Act of 1983 and hopes that the amendments we have suggested will be adopted. The essential features of the bill, in our opinion, are these: (1) Extension of Federal safety jurisdiction to private transportation by bus; (2) uniformity between Federal and State commercial motor vehicle safety regulation; and (3) periodic vehicle inspection under Federal standards.

The greatest improvement that could be made in the bill would be to authorize self-inspection of buses and to require reciprocity for periodic inspections of buses conducted under Federal standards.

Although it is not specifically covered in S. 2174, I would like to take this opportunity to discuss one relevent item. We are deeply concerned, as we believe you are, about the insurance levels implemented by the Department of Transportation. The only standards for entry into the intercity bus business are safety and fitness. We do not believe that the low levels of $2.5 million vs. $5 million and $750,000 vs. $1.5 million protect the public, particularly in the case of new companies who do not have a proven record of safety performance.

We testified repeatedly before Congress, filed comments for the docket, and personnally urged the Secretary of Transportation to keep the minimum levels high and not wait until 1985 to implement those higher levels that Congress set as minimal.

On behalf of the members of the American Bus Association, I would like to thank the Committee for the privilege of testifying today.

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[2] Alberta, British Columbia, Oregon, Washington, California, Colorado, Alaska, Idaho, Utah, Nevada, Missouri, Arizona, Maine, West Virginia, and North Dakota.

APPENDIX

MEMBERS OF THE SAFETY COMMITTEE OF THE AMERICAN BUS ASSOCIATION

Jack Dwyer (Chairman), President, Vermont Transit Company, Burlington, Vermont.

A. J. Achabal, President, Boise-Winnemucca Stages, Boise, Idaho.

Barry Bales, General Manager, Weatherford Transit, Hartsville, South Carolina.

Robert W. Christian, Vice President, Royal Coach Tours, San Jose, California.

Robert J. Forman, V.P.—Safety & Security, Trailways, Inc., Dallas, Texas.

R. H. Hammann, President, Royal Coach Lines, Inc., Racine, Wisconsin.

Don Jones, Vice President, Transit Casualty Company, Los Angeles, California.

Rudy Jordan, Vice President, Alexander & Alexander, One Huntington Quadrangle, Melville, New York.

C. R. Lee, Director of Safety & Training, Carolina Coach Company, Raleigh, North Carolina.

Gordon MacKay, Vice President, Indian Trails, Inc., Owosso, Michigan.

R. C. O'Bryan, Vice President, Seashore Transportation Company, New Bern, North Carolina.

John Silvanie, General Manager, Vanguard Interstate Tours, Ossining, New York.

Roy W. Spence, President, Midway Charter Coach, Baltimore, Maryland.

Carlton Courtney, Safety Dept. Manager, Carrier Safety Service, Dover, Delaware.

Harry Bouterse, Safety Director, A-1 Bus Lines, Inc., 65 North East 27th Street, Miami, Florida.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. Would additional roadside inspections be possible under section 12 of S. 2174 as drafted?

Answer. Yes. ABA was merely attempting to make it clear that if the bill required the States to honor all periodic vehicle inspections conducted under Federal standards, no State should be precluded from making roadside inspections of vehicles. The Committee's intent is clear. Some change in language might be required if reciprocity for vehicle inspections were mandated.

However, there is a slight problem with the procedure discussed. For the comfort, convenience, and safety of up to 47 passengers per bus, ABA always has advocated inspection at locations other than roadside. These locations include terminals, garages, scenic points of interest, national parks, sports events, and other places where large numbers of buses tend to congregate and to be available for inspection.

Question. Should Federal commercial motor vehicle safety jurisdiction be broadened to include intrastate transportation affecting interstate commerce?

Answer. In our opinion, "yes." Only in this way can motor vehicle safety problems be addressed in a comprehensive manner and uniformity of regulation achieved. We estimate that about 35 percent of all intercity bus transportation is affected by this proposal.

Question. Is the creation of a National Motor Carrier Safety Advisory Committee desirable?

Answer. We would not favor creation of such a committee until such time as experience under the new law had demonstrated a clear need.

Senator DANFORTH. Thank you, Mr. Forman.

Mr. Nagle.

Mr. NAGLE. Mr. Chairman, my name is Paul Nagle. I am assistant to the executive director of the United Bus Owners of America, the largest association of bus owners, serving 1,800 bus companies.

I rest on the written testimony which we presented to you, in which we have rendered flatfooted support to your bill. We believe that if the bill were to be enacted in its present language, it would effect vast improvement in the transportation, the climate for all publicly certified transportation of passengers in the United States.

We associate ourselves with the idea of inspection very particularly. Several years ago, United Bus Owners of America participated with the Indiana Motor Patrol in highway inspections of buses. We have strong hopes that we may avoid that type of situation in the near future. If your bill were to be enacted into law there would be self-inspection, periodic inspection, and unannounced inspection, but none of those inspections would need to take place in such a way as to jeopardize or to interrupt the smooth transportation of people on public highways in buses.

I associate myself with the remarks of Mr. Forman and the American Bus Association. Where we might appear to part company is that United Bus Owners of America believes that the present language can stand as it is and that no amendment of any kind is necessary.

We agree with Mr. Henderson that if the Department of Transportation's proposals were to be adopted and if the burden were to be shifted to the States in the matter of preemption that there would be chaos, that the reversal would be chaotic.

We associate ourselves with the remarks of Chairman Taylor in regard to the present procedures, the reason for the present procedures. We have disagreed with Chairman Taylor in the past in the matter of not requiring preapplication verification of vehicular fitness on the part of the applicants.

We believe that in the period beginning with enactment of your bill that the question of whether or not ICC will inspect or require inspection certification or continue its present practices becomes totally academic; that the provisions of your bill will superimpose themselves on the fabric of our environment and will replace all currently, really frivolous procedures which are in place.

We think that the Department of Transportation is justified in its thought that penalties and civil violations should be absolute. We think there should be no exception at all. We believe that your language, if it is approved, will be sufficiently strong that the misgivings of the Department of Transportation will be displaced.

Thank you very much.

[The statement follows:]

STATEMENT OF UNITED BUS OWNERS OF AMERICA

Mr. Chairman, my name is Paul Nagle. I am assistant to the executive director of the United Bus Owners of America (UBOA), the largest association of bus owners in the United States.

UBOA wishes to express its enthusiastic support for S. 2174. We subscribe to the purpose declared in Section 2; and to the findings incorporated in Section 3. We support the mandates S. 2174 would place upon the several agencies, offering special approbation to Section 6(e), with its stipulation that coordination of the activities of those agencies is to be the duty of the Secretary of Transportation.

In earlier testimony (S. 1108; June 14, 1983) our national safety director, Bruce L. Main, described UBOA's internal program for safety enforcement, and endorsed the concepts embodied in that earlier bill. We are complimented that S. 2174 overcomes what we perceived to be a number of infirmities in S. 1108.

Aside from addressing the parliamentary question of divisibility of subject matter, S. 2174 advances precisely the types of issues we think to be most important.

For example, Section 11(a) in S. 2714 is strikingly superior to predecessor language appearing in Section 312 (a) of S. 1108. UBOA supports the ultimate furthest reach of requirements for standaridization of State laws, rules, regulations, orders and practices. To the degree that parliamentary procedures limit this body's freedom to go beyond the declared purposes of S. 2174, UBOA applauds the scope of State uniformity which the present bill would impose and require.

Just so, although we supported Section 313 of S. 1108, UBOA holds to the view that "Inspection" (Section 12) in S. 2174 is vastly more desirable; will more readily be enforcable; that it says everything which is in need of being said.

Concerning Section 13, "Certification of Safety Fitness," improvements over previous proposals are seen to be precisely on target. We applaud with particular enthusiam, enunciation of procedures to be met by entities charged with responsibility for reviewing applications, those seeking either new or broadened motor carrier, operating authority. Should it be wondered, Mr. Chairman, why we did not identify the "entities" mentioned in the preceding sentence, and at the risk of offending your sensitivities for germaneness, let it be mentioned that UBOA has been calling for "Sunset" of the Interstate Commerce Commission. We believe that insupportable impediments are being placed, by other Commissioners, in the path of the Chairman.

To illustrate our devotion to the inspection concept, we call attention to UBOA's program for professional safety inspections of our member companies. Our safety patrols are, constantly, on the highways. Furthermore, UBOA hopes, in early June, to participate in a conference on bus safety, one which will identify standards for self-inspection, for periodic inspection, and for unannounced inspection.

Finally, Mr. Chairman, UBOA applauds the dedication and alacrity with which you have pursued the entire range of issues associated with highway safety. At long last, we dare to hope that, in this Second Session of the 98th Congress, there will be enacted a safety enforcement act which will gladden the hearts of all responsible motor carriers of passengers or of property.

Mr. Chairman, we appreciate the opportunity to have appeared before you, and we hope for early enactment of S. 2174.

Senator DANFORTH. Gentlemen, thank you very much. I think you have covered it pretty well, and you have certainly made clear your views on uniformity, which is probably one of the few real bones of contention, I guess, where people have sharply different points of view.

Your view is that the bill as it stands is the right approach to uniformity and it would be a mistake to get the States more into the business of safety standards?

Mr. FORMAN. Yes; we support uniformity.

Mr. NAGLE. The language of your bill says deregulation shall be nationally uniform as far as is practical. I think that is perfect.

Senator DANFORTH. Good. Well, on that I am reluctant to ask any questions. You have given us such a good sendoff.

Thank you very much. Thank you both for your assistance in putting the bill together.

[Whereupon, at 11:25 a.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

The National Association of Independent Insurers, a voluntary trade association or more than 500 property/casualty insurance companies, is pleased to submit this statement on S. 2174 "The Motor Carrier Safety Act of 1983." NAII has previously commented favorably on S. 1108, Sen. Danforth's omnibus highway safety legislation which included this bill as Title III.

Our comments on S. 2174 today, therefore, will focus on the need to include in the bill a provision to amend the insurance requirements of the Motor Carrier Act of 1980 in order to maintain the current lower limits of liability authorized under the act for a limited phase-in period and to give the Department of Transportation discretionary authority to set such limits in rulemaking. NAII also recommends that the insurance requirements be tied to DOT's hazardous materials placarding requirements. DOT has previously supported both of these recommendations.

Since the Motor Carrier Act was signed into law in mid-1980, NAII has closely monitored the insurance aspects of the law and its effect on our member companies and the industry at large.

NAII continues to dispute the rationale used for imposing federal mandatory insurance requirements (i.e., that they will somehow enhance safety). However, we are pleased to report that from our perspective, the insurance industry has responded positively to the requirements of the Motor Carrier Act and the resulting regulations promulgated by the Department of Transportation.

The industry has had very little difficulty in providing the coverage and limits of financial responsibility required under the new law. The ease in complying with the requirements in great part has been due to the high degree of cooperation between the representatives of the DOT and the industry in agreeing on common sense approaches to a number of critical issues.

Another reason that availability and affordability of insurance has not been a problem is the continuing phenomenon of what we refer to as a "soft market." That is, there has been tremendous financial capacity in the insurance market which has resulted in strenuous competition for business. It is questionable how long this condition will last, however.

A final key to the success of the program has been the delayed implementation of the extremely high limits of financial liability ultimately to be required under the Motor Carrier Act in its present form. In our view, the current limits of liability are sufficient to satisfy liability claims arising from the vast majority of accidents and consequently adequate protection is afforded to the public. NAII therefore recommends that the higher limits of liability not be automatically imposed on July 1, 1984 and that the Department of Transportation be granted authority to determine future limits of liability based on data developed through rulemaking.

One problem we did have and to a certain extent are still having, is that when the Motor Carrier Act was implemented there was no notification procedure. As a result, there was a great deal of confusion as to who actually came under the law. We have some feelings yet that there may be a fairly high degree of non-compliance because of ignorance of the requirements of the law. The Department of Transportation previously recommended that compliance under the law be tied to the DOT's hazardous materials placarding requirements. NAII would like to voice its strong support for that recommendation.

In conclusion, we think implementation of the insurance requirements of the Motor Carrier Act has gone quite smoothly, and we foresee no change in this situation if our recommendations for the continuance of the present lower limits of liability and the tying in of compliance to the placarding requirements are adopted.

THE FERTILIZER INSTITUTE,
Washington, D.C., February 1, 1984.

Hon. JOHN DANFORTH,
Chairman, Subcommittee on Surface Transportation, Senate Commerce, Science, and Transportation Committee, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the U.S. fertilizer industry, we request that this letter be entered into the record as The Fertilizer Institute's comments in regard to the Surface Transportation Subcommittee's February 9, 1984, hearing on the Motor Carrier Safety Act (S. 2174).

However, our comments are directed at Section 30 of Public Law 96-296, the Motor Carrier Act of 1980. As enacted, it has placed an unnecessary financial burden on farmers and fertilizer retail dealers engaged in local, non-bulk distribution of fertilizer materials across state lines. To remedy this inequity, we respectfully request that you give consideration to amending the Motor Carrier Act of 1980 when you mark-up the Motor Carrier Safety Act (S. 2174).

Section 30 prescribes a five-million minimum level of financial responsibility (covering public liability, property damage and environment liability) for for-hire and private carriage involved in interstate and intrastate transportation of hazardous materials. The law, however, gave the U.S. Department of Transportation the authority to issue regulations requiring higher or lower levels of financial responsibility.

In passing the Act, Congress was concerned as to the effect this legislation would have on businesses transporting small quantities of hazardous material. Therefore, Congress enacted Section 30(b)(3)(B), which states:

"In the case of any class of vehicles transporting any such material, oil, substance, or waste in intrastate commerce other than in bulk, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety."

Congress was further concerned that the Secretary of Transporation exercise the authority granted under Section 30(b)(3)(B) so—"that local operations dealing with only small quantities of hazardous material will not be unduly burdened" (H.R. Report 96-1069, pg. 44). The Department of Transportation issued its final regulations regarding minimum levels of financial responsibility for motor carriers on June 11, 1981, and following the direction of Congress, stated in part:

"It is therefore believed that, as to intrastate carriage of non-bulk hazardous materials, existing State laws and requirements adequately protect the public safety in those states and variations amongst such state requirements reflect the considered judgments of the respective state legislatures. Consequently, it has been decided to use the authority under Section 30(b)(3)(B) to effectively exempt intrastate carriers on non-bulk hazardous materials from this rule."

Section 30(b)(3)(B) of the Act provides the Department of Transportation flexibility to reduce financial responsibility levels for non-bulk intrastate transportation. However, this flexibility was not extended to interstate commerce. Thus, farmers and retail fertilizer dealers, engaged in local non-bulk fertilizer transportation—albeit across state lines—must meet the minimum levels of financial responsiblity established by DOT. The intrastate transportation of the same material however, is exempted by regulation from meeting the requirements of Section 30.

We suggest that Section 30 be amended to allow the Secretary of Transportation, by regulation, to reduce the minimum financial responsibility for interstate commerce of non-bulk hazardous material. Such action would remove from the law an inequity that we submit Congress did not intend to occur.

We would be pleased to discuss this further with you or your staff and to supply additional information regarding this request.

Sincerely,

GARY D. MYERS,
President.

ENVIRONMENTAL POLICY INSTITUTE,
Washington, D.C., February 6, 1984.

Senator JOHN DANFORTH,
Committee on Commerce, Science, and Transportation,
Washington, D.C.

DEAR SENATOR DANFORTH: We write to express some concerns about the relationship of the proposed bill, S. 2174, to the Hazardous Materials Transportation Act of 1974. S. 2174 includes the regulation of hazardous materials vehicles by listing such vehicles specifically in Section 4's definition of "commerical motor vehicle." (See also Section 9) S. 2174 also includes some language which is very clearly intended to give the federal government broad preemptive powers over state and local regulations, specifically in:

Section 3 (2): ". . . more uniform . . . safety measures . . ."

Section 6: "The Secretary shall establish and revise such rules . . . as may be necessary . . ."

Section 7 (b): "The Secretary may delegate to a state . . . enforcement . . ."

And especially in Section 11 "STATE REGULATIONS": ". . . nationally uniform, to the extent practicable . . .". This section also puts the burden upon States to demonstrate the validity of a more stringent regulation, with the anomalous exception of State regulations on hours-of-service.

Such language swings the existing "partnership" balance of authority in the HMTA far in the direction of federal dominance, an effort that deserves the most careful scrutiny by interested parties.

Our understanding after conversations with Ken Pierson and others at the Bureau of Motor Carrier Safety is that the two most valued parts of this legislation from their perspective are the restatement of BMCS authority and the modernization of the 1935-era fine structure. Especially if there is to be a new bill in this session that will be a more comprehensive treatment of hazardous materials transportation issues, perhaps the hazmats part of S. 2174 could simply be dropped, with the understanding that conforming amendments to the BMCS legislation could be added as part of the later and more comprehensive deliberations?

We look forward to hearing DOT's explanation at the February 9 hearing of how S. 2174 relates to the HMTA of 1974. We are disappointed that our offer to testify was declined.

Sincerely,

Dr. Fred Millar,
Director, Nuclear and Hazardous
Materials Transportation Project.

Palumbo & Cerrell, Inc.,
Public Affairs Consultants,
Washington, D.C., February 8, 1984.

Hon. John C. Danforth,
Chairman, Subcommittee on Surface Transportation,
Committee on Commerce, Science, and Transportation,
Washington, D.C.

Dear Senator Danforth: I am writing on behalf of the National School Transportation Association in support of the school bus inspection exemption in the Motor Carrier Safety Act of 1983, S. 2174. We are concerned, however, that the bill's language creates a gray area for some of our school buses and are seeking your help in clarifying the language.

As you are aware, school buses are already subject to state inspection in compliance with federally mandated safety laws. The exclusion in S. 2174 therefor provides consistency with other federal regulations. What you may not be aware of is the fact that many school bus operators are small businessmen who supplement their operations by contracting with churches and other organizations for weekend and evening transportation. These buses remain subject to the state inspection, as we believe they should, by virtue of their school related business. Under the present language, however, they would be subject to a second annual inspection.

We believe that the Committee's intent was to exempt all school buses from this additional annual inspection not just those used exclusively for school or school related purposes. We ask your help in obtaining language to clarify this intent.

Thank you very much for your assistance.

Sincerely,

Benjamin L. Palumbo,
President.

National Association of Wholesaler-Distributors,
Washington, D.C., February 15, 1984.

Hon. John Danforth,
Chairman, Subcommittee on Surface Transportation,
Russell Senate Office Building, Washington, D.C.

Dear Senator Danforth: Your February 9 hearings on S. 2174 were of great interest and as I promised during our discussion immediately after the hearing, the National Association of Wholesaler-Distributors (NAW) is submitting the following regarding intrastate commerce problems contained in the bill.

NAW is a federation of 120 national wholesale distribution associations which have an aggregate membership of approximately 45,000 wholesaler-distributors, with 150,000 places of business. (See attachment I.)

The members of our constituent associations are responsible for 60 percent of the $1 trillion of merchandise which will flow through wholesale channels this year, according to the Commerce Department. They employ a comparable percentage, or 3 million, of the 5 million Americans who work in wholesale trade.

During your hearings we noted in the comments of Deputy Secretary of Transportation, James Burnley that he stated, "The federal government should continue to improve its efforts to assure the safe operation of trucks and busses in interstate commerce." (emphasis added) He also brought to the Committee's attention, DOT's feelings that their (BMCS) demonstration program of state grants for stepped up motor carrier safety enforcement efforts, was the direction in which they wished to proceed. He also objected to some of the preemptive aspects of Section (11) concerning state preemptive regulation. We would also like to point out that the accident statistics noted on page 4 of his testimony deals only with interstate carriers.

Reese Taylor, Chairman of the Interstate Commerce Commission, made no comments regarding the language in S. 2174 which would move BMCS authority into intrastate commerce.

Likewise, no comments regarding intrastate problems were presented by Mr. Durham of the International Brotherhood of Teamsters.

Michael Greer, representing the National Association of Regulatory Utility Commissioners, did urge the Committee to take out the intrastate language in Section (4) and the preemptive language in Section (11).

All the other witnesses appearing before the Committee had as their basic premise, uniformity in state regulation which falls under Section (11)(a) of S. 2174. Note they were all referring to interstate trucking, not intrastate.

As wholesaler-distributors, we have an extremely serious problem with Section (4) which redefines the Bureau of Motor Carrier Safety's authority and would bring into play BMCS regulations on our intrastate delivery vehicles. BMCS' regulations were written specifically for the long-haul over-the-road truck and such things as drivers being required to: be 21; maintain logs; adhere to specific "hours of service" rules; and perform inspections, have never been statistically shown to be needed in intrastate commerce.

Even the Bureau of Motor Carrier Safety's own state grant programs which involved Idaho, Utah, Michigan and Alaska did not bring forth evidence to substantiate the movement of BMCS regulations into intrastate commerce.

In researching the BMCS grant program we talked to Captain Val Palmer, head of the program for the Utah Highway Patrol, Department of Public Safety. He indicated to us that they inspected a very small percentage of lighter weight trucks because they felt they had no time for dealing with them. In fact, he went as far as to say they had not really looked at anything under 32,000 pounds in interstate commerce.

Gary Gunnerson who headed the program for the state of Idaho estimated their increased inspections under the grant program were 80 percent on interstate carriers and 20 pecent on intrastate carriers, which were smaller units. He did note however, that they found far more problems with the interstate carrier that they did with the intrastate carrier and expressed, as did Mr. Palmer, opposition to BMCS preemption of state regulations.

According to BMCS, the statistics from Alaska were so small as to be insignificant and the program in Michigan still has another year to run. BMCS says no final statistics are available from Michigan.

In years past, similar legislation has been proposed, based upon BMCS interstate inspections, in an attempt to bring obviously inapplicable regulations on the intrastate carrier. No statistics are available from any source that we know of suggesting federal intervention is necessary to increase truck safety in intrastate commerce.

It is apparent from everything we can determine and from the witnesses at your hearing, the problems lie with the interstate carrier. As an industry of small businesses, who by and large operate within commercial exempt zones or in intrastate commerce, NAW strongly objects to the changes in Section (4) which would expand BMCS authority into intrastate commerce. NAW also objects to changes in Section 9(B)(12) (page 16, line 10 of S. 2174) that would also change the current BMCS authority regarding intrastate commerce. Additionally we would strongly urge that Section (11)(a) dealing with state regulatory uniformity be altered to clarify that the uniformity sought by the provision is only for interstate carriers, not for intrastate delivery type vehicles. Very little of our industry's truck transportation falls under the interstate commerce definition currently used by the Bureau and NAW strongly believes that current state laws adequately protect the public vis-a-vis vehicles that operate intrastate or within commercial exempt zones.

In 1977 a study by the National Highways Traffic Safety Administration, titled "The Severity of Large Truck Accidents," stated in part, "It is found that the accident location has a far greater effect on accident severity than does the size or weight of the trucks. An accident is most likely to be severe (as measured by fatality to a car occupant) if it occurs on a rural two-lane road. Rural four-lane roads have proportionately fewer severe accidents, and residential/business roads have proportionately fewer yet."

We note the bill's expansion of BMCS' authority for civil penalties and in our opinion find this objectionable because it sets up the bureau as "judge and jury." Moreover, in our opinion, the fines are excessive and should this bill expand those penalties into intrastate commerce, our small wholesaler-distributor members would find it financially prohibitive to enter into the litigative process. This would lead, in most cases, to their simply paying the penalty, even when they know they are right. Attempting to go through the expensive and time consuming process of an appeal is beyond the resources of most small businesses. This kind of authority handed to BMCS, we believe, diminishes our industry's right to "due process" and would expose wholesaler-distributors to a levy of civil forfeitures by the BMCS for innumerable regulatory requirements that the totally unnecessary for the operation of the wholesaler's delivery vehicle in intrastate commerce.

When and if a statistical base is developed showing that such increased BMCS authority is necessary, then NAW would of course be amenable to a reasonable and limited adoption of some of the provisions contained in S. 2174 expanding BMCS authority into intrastate commerce. But currently those statistics are not available and until they are, NAW believes there is absolutely no justification for the imposition of regulations on our members designed for the long-haul over-the-road truck by the Bureau for interstate vehicles.

The regulations of the Bureau of Motor Carrier Safety just have no meaningful application whatsoever to the wholesaler-distributor who is delivering goods and commodities in intrastate commerce. NAW strongly believes that statistics have shown definitively that the problem of truck safety is overwhelmingly a problem with the interstate, for-hire or private carrier and most emphatically urges that the Section of S. 2174 which would move the Bureau into regulating intrastate commerce preemptively, be stricken from the bill. We do not believe that S. 2174 would have any impact whatsoever on increasing intrastate truck highway safety.

In conclusion we urge you to: (1) Strike the Section (4) expanded definition of interstate commerce; (2) Amend the language in Section 9(B)(12) page 16 line 10 of S. 2174 to apply to interstate commerce; and (3) Amend Section 11(a) to clarify that the uniformity sought for state preemption is uniformity for interstate carriers not for intrastate delivery of goods and materials.

A far more positive impact on highway safety could be made through expansion of the Bureau of Motor Carrier Safety's grant programs in cooperation with the states to increase their inspections on interstate carriers where statistically the problem has been proven to exist.

We appreciate this opportunity to present in written form the items we discussed following your hearing and respectfully request this letter be made part of the meeting record of S. 2174.

Sincerely,

Richard F. Turney,
Transportation Consultant.

AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION,
Chicago, Ill., February 16, 1984.

Hon. JOHN DANFORTH,
Chairman, Subcommittee on Surface Transportation,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR DANFORTH: The Automotive Service Industry Association (ASIA) is the automotive world's largest and most comprehensive organization. Its membership encompasses more than 8,500 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturer's representatives, manufacturers and remanufacturers of automotive replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

ASIA is submitting the following comments for the record, regarding intrastate commerce problems contained in S. 2174.

During the hearings on February 9, we noted the comments of Deputy Secretary of Transportation, James Burnley when he said, "The federal government should continue to improve its efforts to assure the safe operation of trucks and busses in interstate commerce." (emphasis added) He told the Committee that DOT felt its BMCS demonstration program (state grants for stepped up motor carrier safety enforcement efforts) was the best approach to the problem. He objected to some aspects of Section (11) concerning state preemptive regulation. We note that the accident statistics on page 4 of his testimony deal only with interstate carriers.

Reese Taylor, Chairman of the Interstate Commerce Commission, made no comments regarding the language in S. 2174 which would move BMCS authority into intrastate commerce.

All of the witnesses appearing before the Committee had as their basic premise, uniformity in state regulation which falls under Section (11)a) of S. 2174. All referred to interstate not intrastate trucking.

Michael Greer, of the National Association of Regulatory Utility Commissioners, urged the Committee to take out the intrastate language in Section (4) and the preemptive language in Section (11).

Likewise, no comments regarding intrastate problems were presented by Mr. Durham of the International Brotherhood of Teamsters.

ASIA members, as distributors of automotive aftermarket parts, strenuously object to Section (4) of S. 2174 which redefines the Bureau of Motor Carrier Safety's authority. It would bring out intrastate delivery vehicles under BMCS regulations. These regulations were written specifically for the long-haul over-the-road truck. Such things as drivers being required to: be 21; maintain logs; adhere to specific "hours of service" rules; and perform inspections, have never statistically been shown to be needed in intrastate commerce.

The findings of the Bureau of Motor Carrier Safety's own state grant programs, which involved Idaho, Utah, Michigan and Alaska, do not substantiate movement of BMCS regulations into intrastate commerce.

While researching the BMCS grant program, our Washington Representative talked to Captain Val Palmer, head of the program for the Utah Highway Patrol, Department of Public Safety. He said they inspected a very small percentage of lighter weight trucks because they felt they had no time for dealing with them. In fact, he states they had not really looked at anything under 32,000 pounds in interstate commerce.

Gary Gunnerson who headed the program for Idaho estimated their increased inspections under the grant program were 80 percent on interstate carriers and 20 percent on the smaller intrastate carriers. He noted however, that there were many more problems with the interstate carrier than with the intrastate carrier. He concurred with Captain Palmer's opposition to BMCS preemption of state regulations.

According to BMCS, the Alaskan statistics were insignificant. The program in Michigan still has another year to run; therefore BMCS has no final statistics available from Michigan.

Similar legislation has been proposed in previous years. It too was based upon BMCS interstate inspections, in an attempt to bring obviously inapplicable regulations on the intrastate carrier. We know of no statistical basis that indicates federal intervention is necessary to increase truck safety in intrastate commerce.

Testimony during the hearing indicates the problems lie with the interstate carrier. As an industry of small businesses, who by and large operate within commercial exempt zones or in intrastate commerce, we oppose the changes in Section (4) which would expand BMCS authority into intrastate commerce. ASIA also objects to changes in Section (9)(B)(12), (page 16, line 10 of S. 2174) which would change the current BMCS authority regarding intrastate commerce. Finally we strongly urge that Section (11)(a) dealing with state regulatory uniformity be altered to clarify that the provision seeks regulatory uniformity only for interstate carriers, not for intrastate delivery type vehicles. Very little of our industry's truck transportation falls under the interstate commerce definition currently used by the Bureau. ASIA strongly believes that current state laws adequately protect the public vis-a-vis vehicles that operate intrastate or within commercial exempt zones.

The bill's expansion of BMCS' authority for civil penalties is, in our opinion, objectionable because it sets up the bureau as "judge and jury." Moreover, we find the proposed fines extremely excessive. Should this bill expand those penalties into intrastate commerce, our small aftermarket distributor members would find it almost impossible to enter into the litigative process. In most cases, this will lead to their simply paying the penalty, even when they know they are right. It will be beyond their resources to enter into the expensive and time consuming appeal process. This kind of authority, handed to BMCS, we believe, diminishes our industry's right to "due process". It could expose our distributors to a levy of civil forfeitures by the BMCS for innumerable regulatory requirements that are totally unnecessary for the operation of the wholesaler's delivery vehicle in intrastate commerce.

If a statistical base is developed in the future showing that such increased BMCS authority is necessary, ASIA would be glad to work with the Subcommittee to develop a reasonable and limited adoption of the provisions contained in S. 2174 expanding BMCS authority into intrastate commerce. But currently those statistics are not available and until they are, ASIA believes there is no justification for the imposition of regulations which were designed by the Bureau for the long-haul over-the-road vehicle involved in interstate commerce.

BMCS regulations have no meaningful application to the automotive after-market distributor who is delivering goods and commodities in intrastate commerce. ASIA strongly believes that definitive statistics (which the Subcommittee has) are available showing the problem of truck safety is basically a problem with the interstate, for-hire or private carrier. We emphatically urge that the Sections of S. 2174 which would move the Bureau into regulating intrastate commerce preemptively, be stricken from the bill. We do not believe that S. 2174 will have any impact whatsoever on increasing intrastate truck highway safety.

A far more positive impact on highway safety could be made through expansion of the Bureau of Motor Carrier Safety's grant programs in cooperation with the states to increase their inspections on interstate carriers where statistically the problem has been proven to exist.

In conclusion we urge you to: (1) Strike the Section (4) expanded definition of interstate commerce; (2) Amend the language in Section (9)(B)(12) (page 16 line 10 of S. 2174) to apply only to interstate commerce; and (3) Amend Section (11)(a) to clarify that the preemptive uniformity authority sought for state regulatory preemption is uniformity for interstate carriers not for intrastate delivery of goods and materials.

We appreciate this opportunity to present ASIA's comments and respectfully request this letter be made part of the hearing record of S. 2174.

Sincerely,

John W. Nerlinger, *President.*

UNITED BUS OWNERS OF AMERICA,
Washington, D.C., February 22, 1984.

Hon. THOMAS C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: We at United Bus Owners of America are appreciative of the interest you have expressed and demonstrated in the matter of competitive procedures prevailing among publicly funded and unassisted providers of interstate passenger transportation.

Enclosed is a letter, UBOA received from a member in New Mexico. There is also a copy of our transmittal letter to Mr. Stanley at the Urban Mass Transportation Administration.

The violation which is mentioned as having been referred to the Federal Highway Administration is in regard to hours of service. The matter of a single highway coach being the medium of transportation for both the driver and relief driver is one that has been discussed before your committee. Briefly, a relief river may not "cushion" aboard a bus, unless that bus is equipped with regulation sleeping accommodations. For a relief driver to ride in a trailing car, it is even worse than to be aboard the bus, itself. Our member reports that, on one recent occasion, a relief driver rode in a trailing automobile for 12 hours, after which a period of bus driving was begun.

We will plan to keep Mrs. Phillips advised of what transpires in this and similar instances.

We are planning, on February 29, to present to the House Subcommittee on Surface Transportation, a ringing declaration for S. 2174. Again, we compliment you on your determined and expeditious handling of the entire matter of highway safety.

Sincerely,

WAYNE J. SMITH,
Executive Director.

Enclosures.

UNITED BUS OWNERS OF AMERICA,
Washington, D.C., February 22, 1984.

RALPH L. STANLEY,
Administrator, Urban Mass Transportation Administration,
Washington, D.C.

DEAR RALPH: With further regard to our discussions of the need for early issuance of charter regulation, I ask that you review the enclosed copy of a letter from Gallup Transportation Company of Gallup, New Mexico.

We are advised that the Navajo Transportation Authority has annual income of $678,000, in the following components:

Transit revenue	$53,000
Charter revenue	20,000
Public assistance	575,000

My immediate purpose is to request that the matter be examined, and that we be advised of the degree to which the publicly funded transit body is in compliance with existing charter regulations.

We do not ask your assistance on those portions of the letter which relate to possible violations of regulations promulgated by the Bureau of Motor Carrier Safety. For those purposes, we have referred our member to the Federal Highway Administration's district office at Sante Fe, New Mexico.

Sincerely,

WAYNE J. SMITH,
Executive Director.

GALLUP TRANSPORTATION CO.,
Gallup, N. Mex., February 15, 1984.

Mr. WAYNE J. SMITH,
Executive Director, United Bus Owners Of America,
Washington, D.C.

DEAR MR. SMITH: By way of this letter I'd like to take the opportunity of making the United Bus Owners Of America Executives aware of our plight here at Gallup Transportation Company, Gallup, New Mexico.

Four years ago after assistance from the State of New Mexico the State of Arizona, the Episcopal Church, the Mass Transportation Act the Navajo Transit Authority began.

Each year it exists due to subsidies from either the above mentioned or the Navajo Tribe itself. Each year they have become more and more bold in the attempts to increase their Charter business. Before their existence we along with Greyhound and Trailways provided the necessary Charter needs to the Reservation.

It seems to me very unfair for a Transportation Company which is subsidized should be able to take business away from a Transportation Company which earns all of it's income and pays it's own way. This is even more difficult to handle when they have Charter rates below a dollar per mile in some instances.

I have tried to get through these people that they have to follow the same rules and regulations that I do, but to no avail. I can document trips from Window Rock, Arizona there home base, to Lawrence, Kansas, well over 650 miles with two Drivers splitting the driving.

This based on the Interstate Drivers Handbook is illegal, in as much as, "You are on duty when you are a passenger on a bus at the direction of your employer". Based on this rule I filed a complaint with the Arizona Highway Patrol which caused them to question the Transit Authority.

Now they solve this problem by having a car trail the bus with extra drivers, which I assume gets them by the letter of the Law.

It seems to me these people simply have their own rules and ignore those the industry must follow. I have already spent much on attorney fees trying to reckon with the Transit Authority but with no success.

If you have suggestions on which course I may take I would appreciate your input.

Thank you for your help in this matter.

Sincerely,

DON DELOACH,
Vice President,
Operations Manager.

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